Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

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[*Latin ed. p. 1*]

THE ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED THROUGH THE STUDY AND CARE OF JOSEPH PENNACCHI AND VICTOR PIZZESI.

Legal and more solemn acts emanating directly from the Supreme Roman Pontiff: these are acts which, among those that can be made public by law, are either Decrees, or Instructions, or Responses, or other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of Cardinals, carefully compiled to contribute to the accurate understanding and observance of ecclesiastical law: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts, or which further contribute to the knowledge of existing law, are suitably illuminated; for the benefit of those who diligently seek to understand the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the vineyard of the Lord.

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[*Latin ed. p. 3*]

LETTERS from His Holiness Pope Leo XIII, concerning the obligation that rests upon writers with regard to religious matters and the action of the Church within the Catholic Society.

LEO, BISHOP, SERVANT OF THE SERVANTS OF GOD, TO YOU:

Your letter, filled with sentiments of the most filial attachment and the most sincere devotion towards Our person, brought sweet comfort to Our soul, which was saddened by a recent and not insignificant sorrow. You understand that nothing could cause Us more keenly felt pain than to see the spirit of concord disturbed among Catholics, that tranquil repose, that confident and submissive abandonment, proper to children, within the paternal authority that governs them, be shaken. However, even at the first sign of this, We cannot help but be deeply moved and must immediately think of preventing the danger. Thus, the recent publication of a certain

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writing, which should have been awaited and which you yourself deplore, the uproar that has arisen around it, and the comments to which it has given rise, advise Us not to remain silent on a matter, which, although it may be ungrateful, is nonetheless opportune, both in France and elsewhere. From certain indications that are observed, it is not difficult to gather the facts.

Letters, sincerely expressing the most exquisite sentiments of devotion, have alleviated Our soul and, therefore, with great affection, We, Your devoted father, know that a recent sorrow has caused you distress. Nothing is more pleasing to Us than to see among Catholics a spirit of concord, and to see that sweet tranquility of souls, that trust and submission, which befits those who are children, and who are governed by the paternal authority. Therefore, it is a great sorrow; but even at the first sign of this, We are deeply moved, and We must strive to prevent the danger. Therefore, the recent publication of a certain writing, which should have been awaited, and which you deplore, the uproar that has arisen from it, and the comments to which it has given rise, advise Us not to remain silent on a matter, which, although it may be ungrateful, is nonetheless opportune, both in France and elsewhere. From certain indications, it is not difficult to discern the facts among Catholics.

[*Latin ed. p. 4*]

Letters: Among Catholics, perhaps due to the vices of the times, there are those who, not content with the role of subjects that belongs to them in the Church, believe that they can also have a part in its government; or, at the very least, they believe that it is permitted to them to examine and judge the actions of the authority in their own way. This, if it were to prevail, would be a most grievous injury to the Church of God, in which, by the manifest will of its divine Founder, two parts are absolutely distinguished: the teaching and the learning, the flock and the pastors, and among the pastors, one is the head and supreme pastor of all. To the pastors alone was given all power to teach, to judge, and to govern; to the faithful was imposed the duty to follow the teachings, to submit humbly to judgment, to allow themselves to be governed, corrected, and led to salvation. Therefore, it is absolutely necessary that the faithful submit in mind and heart to their pastors, and to the Head and Supreme Pastor; and in this subordination and dependence lies the order and the life of the Church; in this is placed the indispensable condition for doing good and for succeeding. On the contrary, if the faithful arrogate authority to themselves, if they claim it as judges and masters; if the subordinates, in the government; these, which perhaps is due to the vices of these times, are not content with the offices that belong to them in the Church, but believe that they can have a part in its government, or at least that it is permitted to them to discuss and judge the actions of ecclesiastical authority in their own way. This, indeed, if it were

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to prevail, would be a most grievous injury to the Church, a great disgrace to its divine Founder, in which, by certain will, two parts are distinguished: the teaching and the learning, the pastors and the flock; and among these, the pastors are the head of all, the supreme pastor. To the pastors alone was given all power to teach, to judge, and to govern. To the faithful, on the other hand, was imposed the duty to receive teachings, to submit to judgment, and to be governed, corrected, and led to salvation. It is therefore absolutely necessary that the faithful, in mind and heart, submit to their pastors, and to the Head and Supreme Pastor; in this subordination and dependence lies the order and the life of the Church, and in this is placed the indispensable condition for doing good and for succeeding. On the contrary, if the faithful arrogate authority to themselves, if they claim it as judges and masters, if they are subordinates, in the government; it is entirely different from the supreme authority.

[*Latin ed. p. 5*]

5. Those who, within the universal Church, prefer or attempt to promote a direction different from that of the supreme authority, overturn order, sow confusion in many minds, and stray from the right path. It is not necessary to commit an act of manifest opposition, either against the Bishops or the Head of the Church; even opposition that is made through indirect means is sufficient, and this is all the more dangerous the more it is sought to conceal it with contrary appearances.

Furthermore, one fails in this sacred duty when, at the same time, one shows oneself to be zealous for the power and prerogatives of the Supreme Pontiff, but does not respect the Bishops united with Him, and does not give due consideration to their authority, or when one interprets their actions and intentions in a sinister way, anticipating the judgment of the Apostolic See.

Similarly, it is a sign of insincere obedience to establish a false opposition between one Pope and another. Those who, between two different directions, despise the present in order to cling to the past, do not demonstrate obedience to the authority that has the right and the duty to guide them; and in some respects, they resemble those who, having been condemned, would seek to appeal to a future Council or to a more informed Pope.

What must be considered in this matter is that those who, in general, prefer the past to the present, and who do not respect the authority that has the right and duty to guide them, do not give evidence of obedience. They are, in a certain way, like those who, having been condemned, seek to appeal to a future Council or to a Pope better informed.

[*Latin ed. p. 6*]

6. The *Litterae* are such that, in the general governance of the Church, to safeguard the essential duties imposed upon all the Popes by the Apos-

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tolic office, it is reserved to each one to follow that manner which, according to the times and other circumstances, he deems to be the best. He alone is the judge of this matter; for he possesses not only special lights, but also the knowledge of the conditions and needs of the entire Church, to which his Apostolic providence ought to be conformed. He has care for the universal good of the Church, to which the good of its parts is ordered; and all others who are subject to this order must support the action of the supreme ruler and serve his purpose. Just as the Church is one, and its Head is one, so too is there one government to which all must conform. From the neglect of these principles, respect, veneration, and trust towards him who has been given as a guide are diminished among the Catholics; and that bond of love and obedience, which all the faithful must have for their pastors, and pastors for the supreme Pastor, is weakened; in this bond, indeed, the common safety and salvation of all primarily consist. Likewise, when these same principles are forgotten or disregarded, the widest path is opened to divisions and dissensions among Catholics, to the detriment of the Church's governance, and of all those things that pertain to its nature.

[*Latin ed. p. 7*]

7. The bond of unity, which is the hallmark of the followers of Jesus Christ; and which, always, but especially at the present time, given the combined power of all enemies, ought to be the supreme and universal interest, before which every feeling of personal satisfaction and of private advantage ought to yield. This duty, which generally applies to all, applies with the strictest rigor to the writers of newspapers, who, if not animated by this spirit of docility and submission, so necessary to every Catholic, would contribute to spread and aggravate the inconveniences that are deplored. The task that falls to them, in all that concerns religious interests and the action of the Church in society, is to submit fully, in intellect and in will, like all other faithful, to their "Bishops and to the Roman Pontiff; to follow and repeat their teachings; to second, with full willingness, their impulses; to respect and make respected their dispositions. He who acts otherwise, in order to serve the aims and interests of those whose spirit and tendencies we have condemned in this letter, would fail in his noble mission, and would vainly flatter himself that he is thus doing good and serving the cause of the Church, no less than he who seeks to attenuate or diminish the visible truth, to the detriment of Christ's disciple.

[*Latin ed. p. 8*]

Catholic Letters, or those of a friend who would not be too timid. Discussing such matters with you, our beloved Son, besides the opportunity they may have in France, has also been suggested to us by our knowledge of your sentiments and the manner in which, even in the most difficult times and circumstances, you have known how to conduct yourselves. Always

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firm and courageous in defending the interests of religion and the sacred rights of the Church, you have, even on a recent occasion, manfully supported them and publicly defended them with your luminous and powerful words. But with firmness, you have always known how to combine that serene and tranquil manner, worthy of the noble cause that you advocate; and you have always presented yourselves with a mind free from passion, fully subject to the dispositions of the Apostolic See, and entirely devoted to Our person. We are pleased to give you a new testimony of our satisfaction and singular benevolence, and we are saddened to learn that your health is not as we ardently desire it to be. We offer fervent prayers and continuous prayers to heaven that it may restore it to you, and that it may preserve it for you for a long time. And as a pledge of the divine favors which we abundantly invoke upon you, we impart from the depths of our heart to you, our beloved Son, a blessing.

[*Latin ed. p. 9*]

9. Letters to Our Son, to your entire Clergy and people, We impart Our Apostolic blessing. Given at Rome, near St. Peter's, on the 17th of June, 1885, in the eighth year of Our Pontificate.

Most beloved, with heartfelt blessing, We impart Our Apostolic blessing. Rome, 17th of June, in the eighth year. LEO PP. XIII.

The Letters from the Archbishop of Paris, which provided the occasion for writing the aforementioned Pontifical Letters.

Most Holy Father,

During the grave illness from which I narrowly escaped, thanks, I believe, to the blessing of Your Holiness, I was unable to attend to the affairs of the Church. At the moment when I was struck by this illness, it seemed to me that the wise warnings given by Your Holiness had restored complete unity among Catholic writers and had banished the troublesome discussions that had previously arisen. As my strength returned and I began to recover, and as it was permitted me to learn of the writings that are published daily, I see with great sorrow that this unity, so necessary and commanded by the perils of the moment, is not as real and as secure as I had hoped. It seems to me, from certain polemics...

[*Latin ed. p. 10*]

Letters, more or less veiled, which reveal that there remain seeds of division and opposition, which are most regrettable, and I consider it a filial duty to express to Your Holiness all my sorrow concerning this. In the present situation of the Church, in the face of the formidable hostilities to which she is subject, all good Christians, members of the clergy, especially bishops, and dignitaries of the Church, ought to gather around the sacred person of the Vicar of Jesus Christ, and, under His inspiration and guidance, sustain the good fight with persevering fidelity. The evil of divisions

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always arises from a foundation of self-love and too great confidence in oneself, which one does not know how to restrain. During my long career of forty years of episcopacy, through many agitations and various events, the thought has often occurred to me that the Head of the Church should take such a measure or avoid such another. But God, by His grace, has always made it clear to me that I had not received from Jesus Christ the personal assistance which was promised to Peter and to his successors; and experience has proven to me that the Popes under whom I have lived have governed the Church wisely, as those who, for eighteen centuries, have governed the Church.

[*Latin ed. p. 11*]

For centuries, all those who have preceded us have held these sentiments. I make vows, Most Holy Father, that all, in these difficult times, may be imbued with these feelings of respect, of love for the Church, of personal humility, which the Gospel teaches us, and that this intimate union of the members with the Head may support your holy authority and bring you the consolations of which Your Holiness is so worthy. Please accept, Most Holy Father, the tribute of the profound respect and complete devotion with which I am,

I indeed beseech, Most Holy Father, that all may be imbued with these sentiments of veneration and love towards the Church, and that they may be formed by the humility which the Gospel teaches; that this intimate union with your holy authority may strengthen it, and that it may bring you the consolations which Your Holiness so richly deserves. I offer you, Most Holy Father, a humble testimony of my devotion.

Paris, June 4, 1885.

I also implore, and teach, that in these times, all may be deeply devoted to God, worthy of Your Holiness, as a testament of my obedience.

Your Most Humble and Most Obedient Servant and Son,

J. HIPP.

CARD.

Archbishop GUIBERT

of Paris.

LETTERS

From Cardinal Pitra to Pope Leo XIII, in which he fully submits to the Pope's precepts.

Most Blessed and Most Holy Father,

I kneel before Your Holiness, before the sorrow of the Heart of Jesus Christ. This sorrow is so profound that I cannot think of anything that

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concerns me, except to protest the pain that afflicts my heart before God.

[*Latin ed. p. 12*]

Most Reverend Father, before God, I find within my heart nothing but the most complete submission to the rebukes, the warnings, and all the words contained in Your Letter to His Eminence, the Archbishop of Paris. I deplore what Your Holiness deplores, I desire what You desire, I condemn what You condemn. I dare to thank Your Holiness for having emphasized one of my most profound sentiments of repugnance against the commentaries with which my intentions have been calumniated. It is these commentaries that are the most intolerable, and which I reject with the greatest energy; it is the imputation of hostility towards Your Sacred Person, and of a spirit of opposition with which my life has protested for more than seven years. In my profound isolation, in my constantly cloistered habits, I have never had anything other than the Holy Roman Church as my guide, nothing other than Your Head as my father, nothing other than the ambition to serve both You and the Church to the extent of my abilities, nothing other than the interest of living and dying for God alone. Most Reverend Father, I feel powerless to better express my submission to all Your commands and to all the words of Your Holiness.

[*Latin ed. p. 13*]

13 Your Letters, which I desire, may Your Holiness forget that which was not entirely dependent upon me, and which, I dare to hope, cannot erase all the proofs of devotion that I have striven to offer, and which, with God's help, I will strive always, without reservation, to provide. May Your Holiness not refuse me a paternal blessing, which may sustain me in so much distress, and may allow me to lay at the feet of Your Holiness the tribute of the deepest and most filial veneration that it is given to me humbly to express. From Your Holiness, Calisto, June 20, 1885. I feel myself unworthy; indeed, I trust that you will forget my will, which, beyond what has been done, I could: all that I have striven to offer, and that I will strive always, with God's help, to exhibit without exception, will never erase the proofs of my devotion. May Your Holiness grant me a paternal blessing, which may sustain me in these difficult circumstances, and may allow me to offer to Your Holiness a testimony of the most profound and filial veneration that it is permitted me humbly to express. From the Cloister, June 20, 1885. Your most obedient, respectful, and devoted servant and son.

J. B. CARD. PITRA, Bishop of Porto.

J. B. CARD. PITRA, Episcopus Portuensis.

[*Latin ed. p. 14*]

14 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS. ON MARRIAGE. On the days of July 7th, and September 1st, 1883, and on

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March 7th, 1885. Session 24, chapter 1, concerning the Validity of Marriages. Summary of the Case. In the year 1875, in Paris, in the church of Saint Augustine, a marriage was contracted between the noble maiden Magdalena d'Auvilliers and Augustus Dugué de Livaudais, a citizen of the United States, who resided in the same city of Paris. It is established that Augustus, for several months before the marriage, was bound by an infamous and scandalous relationship with a certain Maria Balot, to whom he had promised to join her in the United States as soon as he could obtain a donation of 250,000 francs promised to him by his mother, with the intention of the marriage.

4 But since a clause of reversibility had been included in the solemn marriage contract, addressed to the donor, Augustus believed that, once his wife was removed, even by means of poison, the impediment to obtaining the donation would be removed. For four months and more, the betrothed lived together, sometimes in the home of the husband, sometimes in the home of the wife, sometimes wandering here and there, and at times performing the marital duties, although the bride confessed that this was never fully accomplished. However, after once attempting poison, and this failing due to the bride's vigilance, Augustus again attempted uxoricide while residing in Thermis, offering an Arabic potion containing strychnine, which the wife barely tasted and then vomited; she nevertheless contracted a serious illness, and Augustus took her, suffering from this illness, to her parents. He himself, a few days later, having obtained a certain sum of money from his mother, went with his mistress.

[*Latin ed. p. 15*]

PARIS. On the 15th of [month unspecified], he fled to America, but not with the success he had hoped for, since he was forced to abandon his wife. Then, from the return of Mary Balot from America, a shameful relationship between August and herself was discovered, and, with other known causes for divorce, a case was brought before the Tribunal of the city of Neo-Aurelianensis, and, at the request of the parents of Magdalena, a decree of divorce was issued. The supplicant then presented a petition to the Most Reverend Archbishop of Paris, requesting the nullity of the marriage due to lack of consent on the part of the husband. Therefore, an order was given to the Most Reverend Archbishop of Paris to conduct a canonical process until a final judgment. Thus, a Tribunal was established in the archiepiscopal court, and witnesses were rigorously examined, while the husband persisted in his defiance. On June 24, 1882, a judgment was issued declaring that "August de Livaudais did not intend to contract a true and lasting marriage with his niece, Magdalena d'Auvilliers, when he appeared to give his consent; but rather, he feigned consent in order to obtain the dowry promised by the parents; therefore, the said marriage was and is void, null, and invalid." Immediately, the defender of the marriage

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appealed to the Sacred Congregation. The woman then hired a lawyer, whose summary of arguments is as follows:

SYNOPTIC DISCUSSION.

DEFENSE OF THE WOMAN. The lawyer endeavored to entirely proclaim the nullity of the marriage, and to achieve this, he first presented the following doctrine of Schmalzgrueber: "This judgment was completed with great sorrow, because this happened; for on February 1, 1883, Magdalena was married, before a priest, to a certain Julio Picot in the diocese of dalenae. The priest, having been appointed by the procurator to bring the matter to a conclusion, and having considered the judgment of the Parisian court, decided that Magdalena was free for a new marriage, due to the lack of consent of her parish priest of originis. It appears from the documents presented that the impediment of consanguinity had not been dispensed with by the Apostolic See."

[*Latin ed. p. 16*]

16. PARISIEN, in *Tus Eccl. univ.*, part. 1, Tit. 1, Sect. 1, no. 264, according to which, for the validity of marriage, the consent of both parties is required, not merely external, but also internal, and expressed by words, so that it may be recognized that the parties have a true, firm, and sincere will to bind themselves with an indissoluble bond, and to undertake the obligations arising therefrom. From this, he concludes that a marriage cannot be valid with a feigned consent, even if expressed by words and signs. To this, he adds Sánchez De Matrim, book 2, Disp. 25, no. 2 and 3. Furthermore, a marriage is vitiated by a defect when it is contracted under an express condition that contradicts one of the essential goods of marriage, namely, procreation, unity, and the Sacrament; indeed, it is sufficient that the intention be contrary to the good of the Sacrament, not expressed in a condition, but simply retained in the mind by one of the parties, as stated by Gonzalez, *Comm.* in *Lib. 4 Decret.*, Tit. 5, cap. 7, no. 3 and 9.

Having established this, the question is raised: whether the intention contrary to the goods of marriage, when not expressed in a condition but only retained in the mind, invalidates the marriage. The Author responds affirmatively, with a third opinion: "The third opinion, which I believe to be more probable, is supported by Petrus de Ledesma, etc.," who establish a distinction between the case in which someone contracts marriage with an intention implicitly retained in the mind against the good of the Sacrament, as if someone intends to contract marriage only for a time, and the case in which someone, with an internal intention not expressed in the agreement, contrary to the good of procreation or faith, celebrates marriage as if intending to avoid procreation or to commit adultery. In the first case, they teach that the marriage is invalid, because such an intention is contrary to

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its substance. In the second case, however, it is held to have force and effect. To this opinion (as follows from the aforementioned passage by Gonzalez), even St. Thomas and Bonaventure in 4 articles, question 3, lend their support, who teach that without the good of the Sacrament, marriage is never given, but it can exist without faith and procreation.

[*Latin ed. p. 17*]

PARISIEN, t. 1; 17. This opinion, as being more probable, is likewise defended by Sánchez de Matrim., Lib. 2, Disp. 29*. "The third opinion," to which I adhere, teaches that the marriage contract must, at least implicitly, intend the good of the Sacrament, which occurs when the contracting parties do not have a contrary intention; however, it is not necessary that they implicitly intend the other two goods of marriage. Therefore, if one had a mind and heart fixed against the good of the Sacrament, because, indeed, he intended not to contract marriage except for a time, there would not be a true marriage. If, however, one had an intention contrary to the other two goods of marriage, solely retained in the heart, and not brought into the agreement, it would nevertheless be valid, as if one intended to avoid children and not to educate them, or to deny the debt and to commit adultery. The first part is proven because, with regard to marriage, it is a bond that is perpetual, as it is clear from its definition. Therefore, he who intends to enter into a dissoluble and temporary marriage, does not truly intend marriage, since the intention is contrary to the essence. This opinion appears to be expressed by Saint Thomas, 4, Dist. 81, art. 3, and by Saint Bonaventure, ibid., art. 4, quaest. 3, where they say: "Without the good of the Sacrament, there is never a marriage, but it can be without faith and children; however, it would still be marriage if something contrary to faith and children were expressed in the consent."

Therefore, to prove the nullity of marriage under this heading, when it is a matter of something hidden in the heart of a man, it is sufficient, he says, that the proofs be such as give moral certainty, based on the circumstances preceding, accompanying, and following the marriage, which would persuade a prudent man: as Sánchez teaches in lib. 2, dist. 42, §. 4: "That certainty is required, and it is sufficient, so that a woman can believe that she is entering into a marriage, when a prudent man would be morally certain of the fictitious consent of the other; because metaphysical certainty cannot be had, since those things which depend on the human heart are known only to God. Therefore, moral certainty is sufficient. This, however, is not defined by law, so..."

[*Latin ed. p. 18*]

18 PARIS. "A rule can be established which, considering the circumstances, would provide certainty in the matter. Thus, Sylvester, *De Matrim.*, 4th Question, 9th Dist., Navarr., chapter 22; Covarruvias, 4th

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Decret., 2nd part, chapter 2, number 4; Peter of Ledesma, *De Matrim.*, Question 15, Article 4, etc. The arguments of these authors should not be examined individually, but rather, they should be considered together, as they contribute to each other, so that, with any exception, they may lead to a greater certainty and be suitable for establishing moral certainty, according to the most common rule: that which is not beneficial individually, is beneficial when united. *Rota coram Molines*, decision 978, § 15. With these principles established in law, the Orator divided his argument into three parts, and then, from the circumstances preceding the marriage, from those concurrent with it, and from those subsequent to it, he sought to demonstrate the lack of consent on the part of the man. Therefore, addressing the first part of his defense, he argued that, approximately two years before the marriage, Peter had been involved in an improper relationship with Mary Balot, to whom he had promised marriage; and that he had carried out this relationship, even though the father had not forbidden it. Furthermore, since he could not obtain the dowry of two hundred and fifty thousand francs, which had been promised to him on the occasion of the marriage, due to the lack of the father's consent, and since no other means were available to him to marry Mary, he decided on the plan of simulating a marriage with a relative, Magdalena, in order to obtain that dowry from the mother. Once this dowry was obtained, regardless of any relationship he might have had with the supposed wife, or even if he had removed her from his life, or even, if necessary, by means of poison, he would travel to America with Mary and marry her there. These facts were revealed through the testimony of the most worthy witnesses, and were presented in the Parisian court. These same facts were recounted by the parents of Magdalena, and were received from Mary Balot herself, and then Peter handed these letters from Peter to them. The intention of Peter was to simulate a marriage with Magdalena,..."

[*Latin ed. p. 19*]

PARISIAN. And subsequently, having abandoned America, Augustus not only expressed to Mary, but also demonstrated in writing, his intention of fleeing. For, among the letters which Advocate Le Faure had seen, there was one written two days before the marriage, in which Augustus expressed to Mary sentiments of perpetual affection. The Defender states that all these things perfectly accord with Augustus's actions, which otherwise would be inexplicable during that time. On the one hand, after the marriage negotiations with Magdalena had begun, Augustus continued to maintain relations with Mary Balot, expressing sentiments of love to her, providing gifts and money, and conversing affably and willingly with her relatives. On the other hand, Augustus did not begin to visit Magdalena until six weeks before the marriage, and that very rarely. Furthermore, in these meetings, Augustus appeared taciturn, preoccupied, and absorbed

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in other thoughts; and he showed so little concern for his fiancée that she herself requested, shortly before the marriage, that they cease their plans and break off the marriage negotiations; and she only yielded to the urging and pressure of her parents, agreeing to the marriage. In addition to these things, Augustus never offered his fiancée any jewelry or gifts, as is customary; he received the marriage contract with reluctance, as is the custom in Paris, where a young woman is supposed to offer it; he did not provide the marital home with the necessary furnishings; and finally, he did not wish to visit the fiancée's relatives and friends. Indeed, the only thing that Augustus intended was that no dowry be agreed upon, and that the sum promised by the mother be continuously paid into his hands. All of these things, the Defender testified openly to the mother and father of Magdalena before the Parisian judge; and the Defender recounted these depositions in full. In the second part of his argument, the Advocate sought to prove the lack of consent in the marriage by demonstrating the circumstances surrounding it. On the very day that the civil contract was to be celebrated, when the time for the civil ceremony had arrived, and all preparations for the civil act were complete, Augustus was absent; he appeared anxious, agitated, and reluctant beforehand.

[*Latin ed. p. 20*]

20. The Advocate Le Faure asserted that, while walking through the palace halls, he was urged to enter, based on the testimony of a recently deceased witness who was present at the event. During the actual celebration, the witness, sacramental notary Le Faure, testified that Augustum appeared sad, agitated, and preoccupied with extraneous thoughts. He had placed his eyes to the right side of the church, where, among others, a woman was present, mocking the betrothed, and he had removed the ring. The notary recognized this woman as Mariam Balot, with whom he had previously conducted business matters. After the sacred rite was completed, the parents of Magdalena testified that Augustum suddenly left the church, and they found him walking in the street, absorbed in smoking tobacco. He was then seen by the bride and by relatives and friends who had attended the ceremony. Indeed, he had behaved in such an impolite and inconsiderate manner towards his wife that he did not even offer her his hand as she ascended the carriage. The Advocate added that one should not be surprised by Augustum's behavior, since he was solely intent on restoring tranquility to his relationship, on fulfilling the promises he had made to her, and on making it clear that he had no intention of being permanently bound to her after the sham marriage. For this reason, he secretly concealed himself in the Count's cellar and furtively wrote a letter to the woman. Although this letter was not found among those presented to the Neo-Aurelianensi Tribunal, the spouses D'Aüvilliers and several other witnesses testified that they had seen and read it, when the matter of the delivery of

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all the letters was being discussed with Mariam, who refused to hand over all of them, even for a price, lest she might be accused of witchcraft. Finally, in the third part of his argument, the Defender proceeded to demonstrate Augustum's intention and will to enter into a sham marriage, based on the subsequent fact that, for many days, there was no carnal intercourse between the spouses; and if there was any relationship afterwards, it was not conducted with marital affection and completeness, but rather for the purpose of satisfying the man's lust, as Magdalena testified in her letter to the judge.

[*Latin ed. p. 21*]

PARISIAN. 21. But the defender urges a greater point: for the intention and will of August to deceive are most clearly demonstrated from several letters, written after the beginning of the marriage to his mistress, all of which he has summarized, but especially from that written in Lyons on April 30, 1875, eight days after the marriage had begun. From all of these, it clearly appears that the consent of August in the marriage begun with Magdalena was truly feigned and simulated, given with an intention and will entirely contrary to the good of the Sacrament, and solely directed towards the end of obtaining from the mother a dowry or donation, by which obtained, he would break the bond with Magdalena, and travel to America with his mistress, leading with her that shameful custom. Furthermore, the Orator considered it necessary to distinguish, that the matter in question does not pertain to the case in which someone has a true and perpetual intention of entering into the bond of marriage, and meanwhile expresses an intention of failing in the duty of conjugal fidelity, so that he may provide the mistress and the wife with conjugal relations: but rather, this case pertains to the situation in which it is clear that August of Livaudais had no intention of binding himself with a perpetual bond, nor of leading a conjugal life with Magdalena; but solely intended to marry Maria, and to achieve this end, he sought to obtain a marriage *media* for himself through the simulated marriage. And not only in writings, but also in words, this was repeatedly confirmed to Maria by August, as witnesses from her have testified. From these declarations, it clearly appears that August did not enter into the marriage with a serious and firm intention, and that his will was to free himself as soon as possible from this temporary bond, and to marry Maria, whom he constantly regarded as his own. Thus far, the preceding statements establish the foundation. Since August intended solely to free himself as quickly as possible from the simulated marriage, in order to fulfill the promise made to Maria, as he himself wrote. For this reason, he repeatedly pressed his father for the donation of goods,

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which happened to be his.

[*Latin ed. p. 22*]

22. The Parisian, intending to nullify the agreement, so that no legal instrument would be executed, but, on the contrary, to ensure that, should the wife of August survive him, half of the sum donated by the mother to the wife would revert to him, declared: "All of August's efforts have been directed towards eliminating the wife, using poison, in order that, with the favor of Magdalena, in the event of her survival, the right of reversibility of the donation would be resolved, and that he himself might possess the property donated by the mother. To this end, he maintained a constant correspondence with Mary in Augustum, writing letters which, so that neither Magdalena nor her parents would notice, he would write in a tavern, and which he would receive himself in his office. Amidst these things, he constantly wandered, sometimes to Magdalena's parents, sometimes to his own, and sometimes to the house of the bride. While Magdalena was living there, he attempted to murder her with pills made with a poisonous substance; meanwhile, he, confident in a successful outcome, sent all of Magdalena's clothes to Mary, under the pretext that they needed to be cleaned, so that she might prepare herself to flee with him to America, after committing the crime of uxicide, and thus obtain the money, having removed the impediment. However, Magdalena, having awakened from her sleep, at that time abandoned the plan, intending to carry it out at a more opportune time and place. In July, Mary, impatient at the delay, wrote to Augustum, complaining of his conduct and urging him to commit the crime. What he could not accomplish at Magdalena's home, he hoped to achieve by staying at the Vichy Baths. On this journey, he demonstrated how much he loved his bride, for he claimed that he had repulsed her when she, tired from the journey or asleep, leaned her head against August's shoulder, and that he had been angered by this. Ten days later, August received three telegrams in one day from Paris, under the false name of Campbell. He immediately went there, stayed at Mary's house for two days, and returned to the Vichy Baths, where, on September 2nd, he again administered the poison, which, although it did not take Magdalena's life, did weaken her considerably."

[*Latin ed. p. 23*]

PARISIAN. For six months, she suffered from an illness, as is most clearly evident from the declaration of Parisian herself, as well as from the testimony of her mother and the doctors. After this attempted poisoning proved fruitless, Parisian's parents asserted that Parisian, suffering from the illness, had returned to Aoste. Furthermore, they added that, because of August's relations with Mary, he feared being brought before the tribunal as the perpetrator of the poisoning, and therefore fled to America with his mistress,

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having previously extorted money from his mother through deceit. Therefore, considering all the circumstances preceding, accompanying, and following the marriage, the defender concludes that there is such strong moral certainty that it must be held that August did not intend to bind himself to Parisian in an indissoluble bond, but rather only simulated a marriage for the sake of appearances and to obtain a financial advantage.

OBSERVATIONS OF THE DEFENDER OF THE SACRAMENTS. The defender is entirely in agreement with the other side, asserting that the marriage is valid and binding. To achieve this more effectively, he divided his argument into three points. In the first, he speaks of simulation, excluding any consent. In the second, he discusses August's intention, which is contrary to the substance and nature of marriage, and states that this intention does not invalidate the marriage. In the third, he argues that the circumstances preceding, accompanying, and following the marriage are irrelevant.

Therefore, addressing the first point of his argument, he observes that all the necessary elements for a valid marriage were present, and therefore the marriage is presumed to be valid, provided that every action is presumed to have been performed correctly, unless the contrary is proven. He adds that this presumption of validity cannot be destroyed by the arguments presented to prove the nullity of the marriage. Indeed, he states that there is no basis for nullity under either of the two grounds: 1. because August did not give a serious, but rather a fictitious and simulated consent to the marriage; 2. because he, the contracting party, did not have the intention.

[*Latin ed. p. 24*]

24. PARISIENSI. He possessed substance, and that which is contrary to the nature of marriage. However, he adds that neither can be maintained in the matter, and therefore concludes that there is no reason to doubt the validity of the marriage in this case. And it is truly the case that Augustus feigned, and simulated, consent to the marriage. He contends that neither Augustus, nor his wife, and indeed much less the latter, can legitimately prove this. Not Augustus, because it is most clearly established that he expressed consent to the marriage with Magdalena before the civil magistrate of Paris, then he manifested it again solemnly before the Church, and finally, he demonstrated it when, having begun the marriage and proceeding with Magdalena to the Sacrarium, he signed the marriage document. He never gave any indication of a notion, or simulation, of consent. Indeed, if Augustus has so often, with a clear and understandable voice, and with certain words and actions, protested that he wished to marry Magdalena, it cannot be asserted now that he consented, since it is most unjust, according to legitimate principles, that what each one has protested with his own voice should be able to invalidate the same case with his own testimony, as Innocent III says in chapter 10 of *Per tuas*. Nor can Augustus effectively

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claim that he consented externally, but not internally. For, setting aside the question of whether this is sufficient, it is answered that this is only being said by him now, at an opportune time, if the opportunity to say this was not offered to him at the time, but only now has he made it clear, and declared that the marriage he is entering into is not valid, because he is an American citizen, and as such, he cannot validly enter into it, except before the Consul of his region. From this, it is clear that the simulated consent to the marriage was not only externally, but also internally, given by Augustus. Nor can Augustus insist that he feigned consent, since the laws proclaim that those who assert this externally can scarcely be believed, unless they clearly and legitimately prove that they were either deceived by fraud, or by force, or by grave...

[*Latin ed. p. 25*]

PARISIAN. Having been induced to the marriage, as Saint Alphonsus states in Book 6, paragraph 908, it is ordinarily held that a spouse is not bound to believe the other spouse's assertion that they fictitiously consented to the marriage, even if that assertion is made under oath, according to chapters "Per tuas" concerning proof, and "A nobis" concerning witnesses, and testimonies, where it is stated: "It is most unjust that what each has protested with his own voice should be able to invalidate itself by its own testimony." Goury and Scavini, interpreters of his thought, explain this more clearly. The former, in Volume 2, § 753, states: "No credence should be given to him unless it is apparent from the circumstances that he was deceived by fraud or induced to the marriage by grave fear; for it cannot be supposed that he who freely enters into marriage has consented with faith." The latter, in Volume 3, page 246, states: "To the one who affirms that he consented to the marriage in good faith, no credence is given in external matters; otherwise, no marriage would be firm, if it were permissible to withdraw from it under the pretext of pretense. Indeed, an opportunity would even be provided for true marriages to be converted into invalid ones. Indeed, in external matters, neither party is heard, even though both affirm it." However, it is clear from the facts that August does not appear to have been either circumvented by fraud, or forced, or driven to the marriage by grave fear; therefore, he cannot legitimately prove in external matters that he fictitiously or ostensibly consented to the marriage. On this matter, the Master concludes in Dist. 27 that, "If, however, they express with words what they do not intend in their heart, if there is no coercion there, or fraud, that obligation of words, by which they consent, saying: 'I take you as my wife,' and 'I take you as my husband,' makes a marriage." And he rightly states that it ought to be concluded in this way; otherwise, almost all marriages would be uncertain, or at least would be brought into controversy and dispute. But if August cannot prove that he fictitiously

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consented, much less can his wife disprove it, Vindex argues. For we are concerned with those things that depend on the human heart, which are known only to God. Therefore, it is futile to say that this was evident in the words and actions of August.

[*Latin ed. p. 26*]

26. The Parisian argues that it is possible to be deceived and to be proven wrong. He states that, although he has asserted that Augustum never explicitly said that he would marry, and that he only pretended to consent for amusement, but only before the marriage, so that Maria Balot would not be disturbed by the very act itself, he declared: "Do not be afraid, because this marriage will not be a serious one; for I am an American citizen, and I can only legally marry within the jurisdiction of my Consul." From this, it is inferred that he did not say that the marriage would not be serious because he had pretended to consent, but because he was an American citizen and, as such, the marriage could not be legally valid unless it took place in the presence of his Consul. Furthermore, he argues that if one were to observe to whom, when, and why Augustum made these declarations, whether before or after the marriage, it would immediately become clear that nothing certain can be deduced from them to demonstrate that he pretended to consent. Moreover, he claims that the witnesses brought forward do not add any weight to the case, since Maria Balot asserts that all of them have testified in her favor. Regarding the actions themselves, the defender of the marriage argues that these actions are of little value in proving that the man positively and intentionally simulated consent, and that they are more likely to evoke pity for the actress. He asks what can be inferred from the fact that he did not give the bride any dowry, except for a ring, that he did not furnish the marital bedroom with expensive furnishings, that he did not visit the parents, and that he appeared distracted during the religious marriage ceremony? He says that these and other indecent and insulting actions can easily be reconciled and explained in a man who, being distracted by another love, could not give his full attention to the woman he took as his wife. He concludes that this entire argument is based on the principle that philosophers, theologians, and jurists teach that a person can, at will, enter into an obligation, without actually intending to fulfill it afterward; therefore, they distinguish the case in which someone feigns an obligation.

[*Latin ed. p. 27*]

PARISIAN. 27, having fallen into a situation where, by accepting her willingly and knowingly, he already considered that the consequences would not be observed, argues that, from the very facts themselves, and especially from the most serious attempt on the woman's life through poison, it can be deduced that Augustum never considered the possibility of consent being

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feigned or simulated, if it had been more advantageous to him at that time to reveal the truth and render the marriage null. Indeed, he attempted to kill his wife when he learned from a scrivener that he would not be able to possess the dowry unless after her death. At that time, having lost all hope of obtaining abundant wealth in America with his wife, he endeavored to take her life. But, upon the verified death of his wife, which hope illuminated the prospect of obtaining the dowry, he was investigated for the crime that could not be concealed, and he was in danger of being condemned to the galleys. Therefore, it would have been more advantageous for him to declare that the marriage was null, given that it had been entered into with a feigned and simulated intention. However, he did not do so, nor did he even consider it. Therefore, since the circumstances made it more expedient for him to reveal his true intentions, it must be said that he never doubted the truth of the consent.

Turning to the second point of his argument, the defender of the marriage upholds Augustum's intention, arguing that he believed the marriage could be dissolved, and that it would last only for a short time, even though it was contrary to the good of the sacrament, or its indissolubility, and therefore contrary to the nature and substance of marriage; nevertheless, it does not invalidate the validity of the marriage, since it clearly appears from the facts that there was no agreement to the contrary. He argues that even if Augustum was laboring under such a private error, it is presumed that he had the intention of contracting a marriage of the kind that is entered into among Christians, provided that it was celebrated with the external religious rite. Furthermore, he asserts that he who contracts marriage in this way, undoubtedly contracts it validly; provided that, in such a case, the general intention of contracting a legitimate marriage prevailed, which is truly the only indissoluble marriage among Christians. He urges this point even more strongly, because such an intention...

[*Latin ed. p. 28*]

28. The Parisian, having brought the matter to a settlement, did not do so, as this is most clearly revealed from the records of the proceedings. Furthermore, it is relevant to consider the teaching of Benedict XIV concerning diocesan synods, book 13, chapter 22, paragraph 7, which concludes that the intention of August is not sufficient to validate the marriage. He adds that this should be admitted even more strongly, because in cases of doubt, the already existing marriage should be favored, and a judgment should be pronounced in its favor, according to the end of the chapter on rules of judgment, which was accepted by all, and therefore he states that the opinion of a single classical doctor, if it supports the value of marriage, should be preferred to the opinions of even many who impugn that value; Schmalzgrueber, part 4, title 19, paragraph 71. Finally, in the third section of his argument concerning the validity of the marriage, the defender

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notes that the discussion of antecedent, concomitant, and subsequent circumstances can be omitted here, because it has already been sufficiently demonstrated above that fiction and simulation of consent could not have taken place in such a marriage. Nevertheless, he believes it useful to speak of these things, so that the validity of the disputed marriage may become more and more clear. He begins by stating that, in general, these kinds of circumstances, both antecedent, concomitant, and consequent, arose from the womb, which August wrote to Mary of Aoste, both before and after her marriage to Balot, as other lovers do, so that she would be attached only to him, and not to another; and he affirms that this is so true that these aforementioned circumstances could not have been had, nor could they have been formed, without them. However, from these things mentioned in the womb, nothing certain and true could be elicited, because they were written by a young man who was burning with a furious love for his mistress, with whom he was fulfilling shameful desires, as the outcome confirmed. Furthermore, coming to the point more directly, he says that the antecedent circumstances are of no consequence. Indeed, among the antecedent circumstances, he first mentions a certain agreement between August and Mary of Aoste to contract marriage after he had simulated it with Magdalena; but he maintains that this cannot be proven.

[*Latin ed. p. 29*]

PARISIAN. He states that, if the witnesses brought by him say nothing other than that they heard it from Mary Balot, who, indeed, having not been legally questioned, and being entirely incapable of being considered a reliable witness, could not possibly have provided any trustworthy testimony. From such circumstances, he asserts, nothing can be inferred regarding a simulated consent. Furthermore, he adds that even less can be inferred from letters written before the marriage, since she wrote them in order to prevent Mary Balot from spreading rumors and causing disturbances during the marriage. Indeed, he argues that she was so far from simulating consent that she did not say that the marriage was null due to a lack of consent, but rather because he himself was an American citizen, and as such, it could not be legally valid without the consent of his consul. However, he adds that neither can the subsequent events demonstrate a simulated consent in this matter, since the reasons given are very weak. He asks: Could anyone believe that the marriage was a sham because, on the day of the civil marriage, he himself was absent, and afterwards appeared agitated and anxious? Could anyone believe that Augustus simulated consent because, during the three days that elapsed between the civil and religious marriages, he showed no signs of love or affection towards the bride? Could anyone believe that the marriages were simulated because, during the religious marriage in the church, Augustus appeared sad, agitated, and distraught? He says that this can be perfectly explained by the presence of

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Mary Balot, whose presence in the church, he himself, Advocate Le Faure, testifies. Finally, he declares that nothing can be inferred from the subsequent events to suggest a simulated consent, since, although the marriage was delayed for a few days after its beginning, she nevertheless eventually confirmed the union. Furthermore, he asserts that the events that occurred after the marriage, which are claimed to demonstrate its nullity, are described in such vivid colors that they are clearly exaggerated. He argues that these events could, in fact, arouse compassion for the woman, but in no way diminish or completely destroy the value of the marriage. And indeed, the most serious event is the death of her husband.

[*Latin ed. p. 30*]

30. PARISIENSIS. An attempt made through poison is not valid. Indeed, they say that he attempted to kill her at that time, when he learned that the notary would not allow him to receive the dowry unless after the death of his wife. Since he had the intention of fleeing to America with the fur, and with the hope of obtaining the promised riches, it would have been more fitting for him to declare the marriage null and void due to lack of consent, than to attempt the bride's death through poison. In the first case, having made this confession, he could have been considered to be agitated by light emotions and passions: in the second case, since the crime could not be hidden, he could have been condemned to the galleys, being unjustly pursued by justice. Since he did not do this, it follows that he did not at all consider the nullity of the marriage. Therefore, it cannot be legitimately proven, either from the preceding circumstances, or from the concomitant and subsequent ones, that Augustus gave his consent to the marriage in a simulated manner. But even setting aside all those additions and circumstances, he himself admits that Augustus protested before many that whatever he said or did, he said and did with the intention of not entering into marriage; but because afterwards he publicly said, "I consent to you," nevertheless, such a marriage must be declared valid, as the Glossa states in cap. *Tua nos verb.* of the De Sponsalibus and De Matrimonio: "But suppose that someone protests before many that everything he says or does, he says and does not with the intention of entering into marriage, and afterwards publicly says, 'I consent to you' - Is there a marriage here, or not? In this case, I say that the Church ought to judge that there is a marriage." With these considerations in mind, the purpose was to determine whether the opinion of the archiepiscopal court of Paris should be confirmed or rejected in this case.

RESOLUTION. After a long examination of the Sacred Canons concerning this matter, on the 7th [day].

[*Latin ed. p. 31*]

PARIS, March 31, 1885. It was decided to respond: The judgment of the

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Parisian Tribunal should be upheld. From which it is gathered: I. That, according to recognized authorities cited by Sánchez in *De Matrimonio*, 1, 2, *disp.* 42, one who affirms that he has given his consent to a fictitious marriage should be considered to have done so in good faith, provided that, from the circumstances, a moral certainty can be established regarding the truth of this assertion. II. It is necessary that there be that certainty which would morally assure a prudent man of the other party's fictitious consent; and since the law does not define this, no more certain rule can be prescribed than that it should be the one that would assure a prudent man, considering the circumstances present. III. In the matter under consideration, these circumstances appeared to have been present, which would have assured a prudent man of a moral certainty, after examining the facts preceding, accompanying, and following the marriage. IV. For the validity of marriage, the external and internal consent of the contracting parties is required; therefore, a marriage cannot exist through a simulated consent, even if it is expressed externally by words and signs. V. According to the doctors, to infect a marriage with the vice of nullity, it is sufficient that one of the contracting parties have an intention contrary to the good of marriage, simply retained in the mind, even if it has not been expressed in a condition; because this intention is contrary to the essence of marriage. VI. Therefore, according to this judgment, one cannot validly contract marriage who, while entering into the marriage, has in his mind, even if retained, the intention of entering into the marriage only for a time; because this intention is contrary to the good of the sacrament, while marriage, by its very nature, is a perpetual bond. VII. A mere intention contrary to the faith of marriage and of the children does not infect the marriage; it infects only to the extent that something would be brought into the marriage contract as a condition contrary to the faith and the children. VIII. The intention of one of the contracting parties, contrary to the good of the sacrament, must be demonstrated from the circumstances.

[*Latin ed. p. 32*]

32. PARISIAN. In order that moral certainty may be attained by judges, considering the preceding, concurrent, and subsequent circumstances, it must be understood that metaphysical certainty cannot be achieved in matters that depend on the human heart. In the case of Augustine, whose mind was opposed to marriage, it was sufficiently demonstrated by arguments drawn from various circumstances that a moral certainty arose, leading him to enter into a temporary marriage with Magdalene, but certainly not a perpetual one.

ARETINA LEGATE. March 10, 1884. By summary petition.

COMPENDIUM OF THE FACTS. Anne Marie, who was the usufructuary of a certain estate, including the buildings of Ducei, a public oratory, died in the year 1861, leaving a legacy of one hundred scudi to a

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certain Donato, with the condition that he open the oratory for the benefit of the faithful, celebrate Mass on feast days, perform evening services with the blessing of the Most Holy Sacrament, and finally, ensure that Mass be celebrated the day after the feast for the consumption of the large host. Since the family of Ducei did not agree to these obligations, the legatee then requested the family of Cherici from the town of Bibbiena to assist in fulfilling these functions and sacred duties. The legatee accepted the legacy and, with the consent of the owners of the oratory, fulfilled these obligations from the year 1861 until May 25, 1873, almost entirely at his own expense, receiving only a small subsidy from others. In that year, since it was not easy to find a priest, and the income from the legacy was not sufficient to fulfill the obligations, indeed, the legatee believed that almost all, or all, of the assets of the legacy had been consumed in this endeavor, he refrained from fulfilling the obligations. And he petitioned the Sacred Congregation of the Council to declare whether he himself was safe.

[*Latin ed. p. 33*]

33. ARETINA posited that conscience might allow one to refrain from fulfilling the burdens of a legacy, and, in the hypothetical case that one were bound to fulfill those burdens, she requested that they be reduced to a more equitable measure. When the Bishop was asked about this matter, he responded: "From the circumstances surrounding such a legacy, it appears that the testatrix intended rather to express a pious desire than to truly impose an obligation on the legatee. For, indeed, those who possess the Oratory should bear a portion of the expenses of the Oratory's administration, and should also grant the Oratory for the purpose of administration. But if they refuse? And in fact, they refuse to bear the expenses. Then the Orator would be obligated to fulfill the conditions of the testatrix not from the assets of the legacy, but from his own resources, which is absurd. Therefore, I believe that the Orator should be relieved of the burden of the legacy." *Disceptatio Synoptica*. However, the legatee seems to be bound if the words of the testament are considered, in which it is clear that the testatrix did not merely express a pious desire, but truly intended to obligate the legatee. Furthermore, by accepting the legacy, a contract, as it were, is established between the legatee and the testatrix, by which the legatee obligates himself to fulfill the burdens of the legacy; it is well known that a legacy granted under a condition binds the legatee to that condition. Since this legacy is personal and the testatrix does not specify when this obligation should cease, it seems to endure as long as the legatee lives. THE OBLIGATION DOES NOT SEEM CERTAIN. But, on the other hand, it must be noted that the obligations of legatees do not extend to the inheritance of those who inherit; since legatees are not bound to fulfill the burdens of the legacy beyond the assets of the legacy itself. *Leg. 70 §. i ff. de Legatis 2*. - Vinnius, *De singulis rebus per fideicommissum relictis*, Lib. 2,

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Tit. 24, §. 1, no. 2. - Voet, *De Legat, et fideicommissis*, no. 15, etc. This truth is reflected in the legal maxim: "No one should be burdened more than he is honored." In this case, however, the legatee seems to have consumed almost all of the fruits and all of the assets of the legacy in fulfilling the burdens. THE OBLIGATION SEEMS CERTAIN. *Atta, Tom. XVIII, fase. C C V. 8*.

[*Latin ed. p. 34*]

34 ARETINA Furthermore, from the will, it appears that the pious woman believed that a portion of the expenses would be borne by the families of Ducei and Chierici, which, however, did not occur. For the legate declares that he received only meager assistance from them. Finally, the words of the legate do not seem to be precise or clearly defined, nor do they specify any particular time. And perhaps it would be too harsh to interpret them rigidly, and to understand the silence regarding time as meaning perpetual obligation: especially since, for the sake of gratitude, a bequest appears to have been left to the Oratory by the testatrix: for the legate was his procurator. With these points noted, the question was raised as to how the legate's prayers should be fulfilled. RESOLUTION. The Sacred Congregation of Councils, having considered the matter on March 7, 1885, responded: For the granting of an exemption, a verbal agreement was made with the Most Holy. FROM THE SACRED CONGREGATION FOR RITUAL, SULMONA. On June 6, 1885. DECREE. By the Most Holy Lord Pope Leo XIII, through Apostolic Letters in the form of a Brief, dated January 16, 1883, the parish church of the Blessed Virgin Mary, assumed into heaven, commonly called "della Tomba," in Sulmona, was erected into a collegiate church, for the sake of honor only; and in it, likewise, a canonical college was established, also for the sake of honor; and subsequently, by a decree of the Sacred Congregation of the Consistory, dated April 15 of the same year, the Church of the Most Holy Annunciation of the Virgin, existing in the same city of Sulmona, was similarly elevated. • Therefore, a controversy arose among the clergy of these churches regarding the right of precedence in the sacred functions; especially.

[*Latin ed. p. 35*]

SULMONA. 35, concerning processions and funeral ceremonies; to resolve which, both parties appealed to this Sacred Congregation of Rites. Therefore, everything concerning this matter was conducted according to the norms of law; and, furthermore, a proper agreement was reached between the parties regarding the point in question, which was stated as follows: I. Whether the intervention of a judge should be admitted in this case. And to this, the affirmative answer was given. II. To whom the right of precedence belongs in this case. Therefore, because the Most Reverend

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and Most Reverend Cardinal Mieczysław Ledochowski, the proponent of this cause, proposed to discuss this very doubt in the ordinary special sessions of the Congregation of Sacred Rites, with the participation of the Most Reverend Fathers, Doctors of the Sacred Roman Rota, convened at the Vatican on the aforementioned date, the aforementioned assembly, after carefully considering the laws and reasons presented from various sources, decided as follows. Regarding I, negatively. Regarding II, considering what was provided in the first point, namely, in favor of the collegiate church of the Blessed Virgin Mary, assumed into Heaven, commonly known as "della Tomba," and according to the understanding of the matter, it decreed on June 6, 1885. The ancient city of Sulmona possesses two churches dedicated to the Blessed Virgin Mary; one of which has been recognized from time immemorial under the title of Saint Mary, assumed into Heaven, commonly called "della Tomba"; the other was consecrated to the Blessed Virgin, greeted by the Angel. Both of these churches, through the benevolence of the Most Holy Father, were raised to the status of collegiate churches, concerning only the honors: namely, the church of Saint Mary "della Tomba" was raised to this honor by Apostolic Letters in the form of a Brief, dated January 16, 1883; and the church of the Annunciation was raised by a decree of the Sacred Congregation of the Consistory, dated April 15, 1883. After these matters were settled, a dispute arose among the clergy of these churches concerning the right of precedence in the sacred functions, and especially in processions and funeral ceremonies. SUMMARY OF THE FACTS.

[*Latin ed. p. 36*]

36 SULMONA. Disputation concerning the Synodal Process. JURISDICTIONS. *MARIAE DELLA TOMBA*. The advocate argued that the right of precedence belongs to the very party who claims it, and that those who, considering various circumstances, believe that this right belongs to the Church of *Mariae della Tomba*, are displaying childish cunning. For, through fervent prayers, they have sought new honors from the Most Holy Pope, hoping to obtain this right through artifice and indirect means; but the Prince has not granted these new honors. Considering these circumstances, the advocate stated that there is no basis for opening the cause in this matter: for, according to the most learned Cardinal De Luca, *Disputationes*, 8, numbers 3 and 6, concerning jurisdictions and forums, such a concession is rarely granted unless there is a very important reason, and an exorbitant injury is present... especially when the matter is already demanded for execution. However, in this case, there is no important reason, nor an exorbitant injury; for the matter concerns a concession which brings no prejudice to the ecclesiastical body. It does not affect the rights of the Cathedral Chapter, which preserves its privileges and prerogatives, nor does it affect any other collegiate body, if there is

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one, because this concession creates no innovation. Indeed, it brings no prejudice to the honors of the Collegiate Church of the Annunciation, which lacks even dignity: for it is entirely distinct, and its canons, who are present today and tomorrow, can cease to be so, even without cause. To grant the opening of the cause without cause, in order that the favor of the Supreme Pontiff may be reduced or revoked, is utterly absurd. Furthermore, there is no injury present in the matter under consideration, which must be grave and exorbitant; for an injury presupposes a right: but in this matter, on both sides, the matter concerns a favor; which clearly demonstrates that all rights are absent, and that nothing belongs to them by right. Therefore, the opening of the cause must be denied in this matter, for lack of injury. Furthermore, the aforementioned rule of acquired right confirms what has been said: for the favor granted to the Collegiate Church was given before the opponents compared [their claims], and moreover, it was already demanded for execution. Therefore, the matter concerns the taking away of an acquired right, for which causes for opening [the matter] are not permitted.

[*Latin ed. p. 37*]

SULMONA. 37 must entirely exclude all doubt: for the opposition made to the matter, which is more extensive than the right sought by our clients, the advocate said, should not impede the enjoyment of grace, already perfected; since, in matters of grace, that which is prior in time is superior in right. Nor can the opening of proceedings be granted on the basis of a claim of fraud or deception. Indeed, the vice of fraud or deception cannot, in any way, be proven in this case; as stated in Fagnan, I, 1, in the decree, chapter concerning rescripts, fraud or deception is present where there is a false expression, or the silence of the truth, by which the Pope would not, in any way, have granted the letters, but rather would have denied them. However, it is entirely in accordance with the truth that which was presented to the Supreme Pontiff. With these considerations in mind, the advocate concluded that the right of precedence belongs to the Collegiate Church of *S. Mariae della Tomba*, stating that this controversy is entirely identical to that of *Meliten*, concerning precedence, of September 27, 1884. The Church of *S. Mariae della Tomba* was adorned five months prior with the honorable title of Collegiate, which the Church of the *Annunciation* subsequently obtained. Moreover, in this controversy, the rule of law 54 – that which is prior in time is superior in right – cannot be doubted, because it is in accordance with practice and the disciplines of the Holy See. Indeed, if, according to the disposition of the law, that which is named first by the Supreme Pontiff precedes those who are listed in the same letters, according to the chapter on mandatory law, and a lesser privilege is preferred over a greater privilege according to chapter *accusat, de primi, in 6*, how much more so should that which has, for itself, much earlier Apostolic letters

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precede, as each can see. Therefore, the advocate concluded, the right of precedence belongs to the Church of *S. Mariae della Tomba*, and there is no room for doubt. This thesis is confirmed by the Consistorial decree of April 15, 1883, in which it is stated that it is the mind of the Pope that nothing should be taken away from the honor, precedence, or rights of any kind of curia in the city of Sulmona. Furthermore, by reason of dignity, the right of precedence belongs to the same Collegiate Church of *della Tomba*. And indeed, in the Apostolic letters, express renunciation is made.

[*Latin ed. p. 38*]

38 SULMONA. A canonical collegiate, established solely for honor, consisting of a single dignity, namely the Rector and nine Canons. However, as Pirro Corrado states, dignities within the Church were instituted to preserve and promote ecclesiastical discipline, *Prax. benef. lib. ″2 cap. 1 n. 17*. It follows that whoever holds a dignity, whatever name he may be called by, must not only precede in functions performed within the same church, but also in those performed outside of it. Indeed, it would be improper to see a dignity standing in a less worthy place, when both the aforementioned collegiate bodies are present at sacred functions. Conversely, canons who are removable at will and without cause should occupy a more worthy position. De Luca teaches in *disc. 12 n. 3* that, in matters of precedence, the dignity must be considered first; thus, it should be given to the more worthy rather than the less worthy. Furthermore, by reason of antiquity and dignity, the Church of *S. Mariae della Tomba* has precedence. Indeed, when resolving questions of precedence among parish priests, the nobility and prerogative of the parish church are considered; *Ferraris v. praecedentia n. S*. And rightly so: for every dignity and prerogative in a parish priest, as such, derives from the church to which he is joined by a spiritual bond. Moreover, there is no room for doubt in our case that the Church of *della Tomba* surpasses the other church in antiquity: for it was, from the very beginning of Christianity, dedicated to the Most Holy Virgin Mary, assumed into heaven, having previously been a pagan temple in the city of Sulmona. As for whether it surpasses the other in dignity, there is no ambiguity; for the Church of *della Tomba* has always been a parish, while the other lacks this dignity. In the former church, the habitual and actual care of souls remains; in the latter, ″no parochial jurisdiction remains.″ Therefore, the advocate said, whoever sees our clergy should recognize that one is more worthy than the other, just as the Church of *S. Mariae Annuntiationis* surpasses the other in antiquity and dignity. Wherefore, having brought forward the reasons for both clergy, the orator concluded with the Bishop.

[*Latin ed. p. 39*]

SULMONA. The thirty-nine years of continuous existence, the parochial

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status, and the antiquity with which the clergy of this church are endowed, both as a simple clergy and as a collegiate chapter, render it preferable to that of the Most Holy Annunciation, which depends on the will of the administrators, lacks parochial status, and which, both as a simple clergy and as a collegiate chapter, is of later origin. Furthermore, the advocate endeavored to demonstrate that all previous agreements had already been annulled with the consent of both parties and by episcopal authority; and therefore, all doubt of any deception is thereby eliminated. It must also be noted that, by a Consistorial decree, the old church has been extinguished, and a new one erected. Therefore, with respect to this decree, from which new life and a new existence arise, the right of precedence must be considered. Since, in controversies concerning privileges, the established rule and invariable principle is – "prior in time is stronger in right"; it necessarily follows that the right of precedence belongs to our church.

THE RIGHTS OF THE CHURCH OF THE MOST HOLY ANNUNCIATION. The defender of this church began his argument by saying: If there is any church in the city of Sulmona that deserves the highest honors, after the Cathedral, it is that which has been granted to our clergy, whether one considers the construction of the building, or the clergy themselves, distinguished by special privileges. Indeed, a magnificent temple rises there, adorned with exquisite paintings and precious decorations, consecrated to the Blessed Virgin Mary, greeted by the Angel. And the citizens of Sulmona experience the works of charity combined with faith; for within this building is found the richest hospital and a home for girls; therefore, this monument of faith and charity is called the Holy House. Therefore, this church, rightly distinguished, not only surpasses the other churches in decoration and size, but, in all respects, possesses, if not by right, then certainly in fact, the endowments of a cathedral.

Indeed, just as the ancient origin of this church is, so too is the existence of the ecclesiastical college; which now consists of twenty-eight priests with a rector, and which is substantially governed by constitutions and rules, by which it is truly a collegiate body, with the use of a common seal and the convocation of chapters.

[*Latin ed. p. 40*]

40 SULMONA. by these regulations are governed. Therefore, Urban II appropriately adorned it with emblems and ornaments, granting privileges to Rocchetto and Mozzetto, the Rector and Chaplains; who now possess honorable distinctions and external adornments, which are used by the Canons of St. John the Greater in the city of Naples. Consequently, considering this privilege, after the Cathedral, it rightfully held precedence over other churches. However, not only due to its ancient origins, but also due to special prerogatives, this collegiate church asserted its precedence, and this was confirmed by an agreement in the year 3802.

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Against such agreements, those who stirred up disputes and litigations sought to challenge the precedence: as a result of which, in the year 1818, a new agreement was established, by which the precedence of the Church of the Most Holy Annunciation was permanently resolved. And both parties formally subscribed to this agreement in the name of all their successors. To this is added the right of raising the cross, established by an unforgettable custom and confirmed by a decree of the Apostolic See (1). This right, the advocate stated, not only demonstrates the antiquity of our distinguished clergy, but also their superiority over the opposing clergy. The advocate lamented that, due to the present dispute, something must be granted to the Bishop; who indirectly hindered the petition of the clergy of the Most Holy Annunciation, by which they had sought from the Holy Consistorial Congregation that their church, distinguished in number of priests and abundant in resources, be granted the honor of the collegiate church. For the prelate, seeking information and a vote, began to delay, meanwhile recommending another church, with the intention that the opposing clergy, abandoning the Consistorial Congregation, through the Secretariat of Briefs, with the necessary circumstances expressed, might obtain the honor of the collegiate church. However, the advocate stated, it is of no concern to us that such letters of recommendation be issued: because the law and canonical sanctions prevent the granting of graces through vitiated prayers (1). The question remains: Volume XIV, page 514.

[*Latin ed. p. 41*]

SULMONEN. 41. And furthermore, against the agreements made, they are supported by the prejudice of a third party. Although the clergy, numbering nine, had remained silent regarding precedence, the Bishop ought to have manifested the due precedence owed to our clients, arising from a formal double agreement. However, he did not carefully consider this circumstance, although he mentioned the precedence, which, not by law but by custom, ought to be observed by the College of Parish Priests. Consequently, the apostolic brief ordered that the precedence of the parish priests be maintained and respected, and he would have preserved this, favoring the Clergy of the Most Holy Annunciation, if he had thoroughly understood the aforementioned agreements. Meanwhile, the Clergy of the Most Holy Annunciation, who had offered prayers first, obtained the requested grace for the erection of the Collegiate Church later, namely three months afterwards, due to the delay in information from the Bishop. This entire situation resulted in the fact that, disregarding the Congregation, and anticipating the argument, a favorable rescript was reported against the clergy, before the Clergy of the Most Holy Annunciation obtained the decree that had long been requested. However, the prudent Sacred Consistory, having read the case of Sulmonen concerning the raising of the Cross,

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did not, indeed, leave the precedence in favor of the parish priests, which had been stipulated, untouched, but also took care to ensure that, for the same reason, the precedence in favor of our clergy, due to the right arising from the double agreement, would remain inviolate. Then, the opponents, with a cleverly conceived question, proposed to this Sacred Congregation, in order to prejudice the precedence due to our clergy, in which, without producing the text of the brief and the consistorial decree, they inquired: whether the right of precedence in processions pertains to the Clergy of the Tomb or to the other Clergy of the Most Holy Annunciation, from which each had been elevated to the Collegiate status. The particular Sacred Rota, with a hidden artifice, by which the brief had been relaxed beforehand, gave a response according to the rule of law – "prior in tempore, potior in jure" – that is, the clergy that obtained the privilege first should precede. Our clients, not discouraged by this response, sent a supplication to the Holy Father in order to preserve the rights acquired.

[*Latin ed. p. 42*]

42. SULMONA. Since a clause favorable to them had been included in the Consistorial decree, the rights of the Sardinian and Sabine clergy remained intact, having been legitimately acquired from elsewhere. Furthermore, they pointed out, by virtue of this decree, that the right of precedence over other clergy must be fully maintained. With these observations, the advocate declared, there could be no doubt of a deception regarding the Apostolic Brief, because in the prayers and letters of the Bishop of Sulmona, no mention had been made of the custom and the solemn agreements by which both clergy had agreed that precedence should be given to the clergy of the Most Holy Annunciation. Moreover, they had agreed to be bound by this obligation perpetually, not only the parties themselves, but also their successors by the authority of the Bishop. Furthermore, if the Pope had been aware of this previously acquired right, he would have ordered the Brief to be drawn up with limiting clauses; that is, he would have added, "saving the rights and agreements regarding precedence in favor of the clergy of the Most Holy Annunciation." These limitations are in conformity with the justice of the Holy See, so that, in no case should gratitude be granted with prejudice to a right already acquired for a third party; and therefore, strict observance of Rule 18 of the Chancery is insisted upon, which states that an acquired right should not be taken away. The assertion of ignorance is not an obstacle; for it is not generally true that any ignorance excuses one from the fault of falsehood: for ignorance is either just and probable, or unjust and feigned. Just and probable ignorance excuses, but feigned ignorance does not excuse from other penalties, and thus from the nullity of the rescript. It seemed to everyone to be sufficiently possible to know whether the Pope would have granted, or not, with equal generosity, a favor that is usually granted by law or by the style of the Curia; which

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would be different if what is granted is not usually granted by law or by the style of the Curia; or at least, if it is granted, it is done with a limiting clause, so that acquired rights and agreed-upon pacts are not violated. For in such a case, it is presumed that deception was the cause of the action. Therefore, with a serious doubt of circumvention arising, the Brief, hastily issued in favor of the other clergy, is entirely invalid.

[*Latin ed. p. 43*]

SULMONEN. 43 ought to be, or at least reformed; ReiffenstuelM». 2 decrees, title 3, regarding rescripts, 183. Passing to other arguments in favor of the Church of the Most Holy Annunciation, he said: "Our clergy, since the year 1790, has been elevated in substance to the excellent status of an honorary collegiate church. And therefore, from that time onward, although not formally a collegiate church, nevertheless, as has been confirmed by an apostolic decree in the present case, it ought to be called a collegiate church with respect to honors, with the same honors that are enjoyed by the canons of the collegiate church of St. John in the greater city of Naples. Therefore, since our clergy and college have been established in the manner of the illustrious collegiate church of St. John, the same precedence, especially with regard to the right of precedence over others of equal rank, is rightfully due to them. The term 'in the manner of' truly and adequately expresses imitation, according to canonists and liturgical authors: Barbosa de clausul. usufreq. claus. 5; Suarez de leg. lib. 5 cap. 15 n. 2. Therefore, if no apostolic brief had been granted to our clergy for the sake of abundance, truly the honorary precedence would have belonged to the clergy of the Most Holy Annunciation, setting aside even the concordats, from the year 94 onward, concerning the clergy called 'Tumb'a'. Hence, although a brief has been granted primarily to the opposing clergy, this circumstance justified the inclusion of a clause in favor of our clergy – leaving intact the rights acquired from elsewhere. Indeed, 'from elsewhere' expresses the right acquired that is to be presented, which has nothing in common with the granting of briefs; and therefore, it refers to ancient rights, which originate either from already granted privileges, or from conventions and agreements formally stipulated. Finally, the advocate pointed out in favor of the clergy of the Annunciation that the will and munificence of the Most Holy Father should be considered: who, in recognition of the excellence of the collegiate church of the Most Holy Annunciation, granted that its canons should be vested in large robes, that is, in honorary garments and ornaments, with which primary cathedral churches are adorned: but from chapter 5 regarding privileges.

[*Latin ed. p. 44*]

44. SULMONEN, in VI: "Maioritas habitus, maiorem personam designat, et praecedentiam attribuit."

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From which we gather:

I. In controversiis quoad privilegia, regulam praecipue habet: prior in tempore, potior in iure.

II. Mutationem tituli et status alicuius Ecclesiae, ex praxi canonica, efficere ut vetus Ecclesia extincta sit, et nova erigatur.

III. Hinc ius praecedendi inter duas Ecclesias, quoad honores pares, desumendum esse videtur ex tempore quo auctoritate Apostolica earumdem status et titulus immutati fuerunt.

IV. In proposito, factum est ex gratia pontificia, ut una et altera Ecclesia, inter quas lis est de iure praecedendi, diverso tempore eveherentur ad honores Collegiatae; hinc ius praecedendi rite tributum fuit Ecclesiae, quae prior et statum et titulum novum adepta est.

V. Oris aperitionem concedi solere tantum ex magna causa, et accedente exorbitanti laesione, quam gratia inferat tertio.

VI. In proposito, videntur et magna causa et laesio exorbitans: agitur enim ex utraque parte de gratia; id quod ostendit abesse omne ius, nihilque ex iustitia competere; verum ubi ius abest, etiam laesio abesse prorsus debet.

[*Latin ed. p. 45*]

45 FROM THE SECRETARY'S OFFICE – Letters. Letters from His Holiness Pope Leo XIII, in the form of a Brief, by which Saint Vincent de Paul is declared the patron of all societies of charity.

LEO XIII, POPE. FOR PERPETUAL REMEMBRANCE.

Since Jesus Christ has given many precepts to the human race, by means of which men might be led to a righteous life, He has never ceased to give and commend above all else this: that each one should love his neighbor as himself. For He Himself, who is Charity, taught that charity is like a foundation upon which the entire Law rests, and a certain characteristic by which those who follow the Christian way of life are distinguished from others. Therefore, it is not surprising that this most excellent virtue, which is born of others rather than of itself, and which is the parent and sustainer of all virtues, has taken root especially in the hearts of those who, following the footsteps of the Divine Teacher, have striven to attain the perfection and completion of all virtues.

Wonderfully, among these, Vincent de Paul shone forth at the close of the 17th century, a great and immortal example of Christian charity, who excelled above all others in this virtue. There was hardly any kind of hardship to which his wondrous charity did not extend; no labor which he would not willingly undertake for the benefit and advantage of his neighbors. And indeed, after Vincent departed this life and went to heaven, the source of

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the beneficial works which he had instituted did not dry up, but, having been channeled into many streams, it still flows abundantly within the Church. For this most holy man not only strove for this virtue himself, but he also drew many others to imitate him, gathering some into the common discipline of religious life, and receiving others into pious societies which he himself established with most wise rules. How great are the fruits which human society daily receives from them, can easily be inferred from the fact that, not yet having completed a second century since its foundation, societies of both sexes have already spread throughout almost all parts of the world, and everywhere have merited the admiration of all.

Certainly, it is not unknown that the Vincentian Brothers are always ready to assist all those in need: they are present...

[*Latin ed. p. 46*]

46. DECREE concerning the sick in hospitals; to be present in workshops, in schools, among the very weapons of soldiers, doubling assistance everywhere, both to bodies and souls. Concerning these matters, the Roman Pontiffs, Our Predecessors, held the Vincentian Congregations and Societies, and all other societies of charity, which, although they do not have the same name, derive their origin from the same source, in high esteem, and have always considered them with the greatest care. Following in their footsteps, so that all such societies might draw more abundantly from the spirit of their author and founder, and especially at the request of the Venerable Bishops of Gaul, as mentioned above, We declared and established Saint Vincent de Paul as the heavenly Patron of the Societies flourishing in France. This decree We extended last year to the Dioceses of Ireland, so that the pious desires of their prelates might be fulfilled. Recently, We have received prayers from many Cardinals of the Holy Roman Church, and from Bishops from almost all regions of the world, and from the highest superiors of the Religious Orders, that We might extend the aforementioned decree to all parts of the Christian world, where societies and works of the same nature exist. After hearing the opinion of the Congregation of the Holy Roman Cardinals, entrusted with safeguarding the sacred rites, We judged it fitting to favorably grant these pious requests. Wherefore, for the benefit of the entire Christian republic, to increase the glory of God, and to stir up the study of charity towards our neighbor, by Our Apostolic Authority, in these letters, We declare and establish Saint Vincent de Paul as the special Patron before God of all societies of charity existing throughout the Catholic world, and of those which in any way originate from him, and We will that all due honors be given to him, as are fitting to heavenly Patrons. We decree that these present letters shall be firm, valid, and efficacious, and shall have and obtain their full and complete effect, and that those to whom they pertain, and may pertain, shall fully support them. Notwithstanding any Apostolic Constitutions and Ordinances, or

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any other contrary provisions whatsoever. We wish that to these present letters, or to copies, even printed, signed by the hand of a public Notary, and sealed with the seal of a person holding ecclesiastical dignity, the very same faith be given as would be given to the present letters if they were exhibited or shown. Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the 12th day of May, in the year 1885, in the eighth year of Our Pontificate. M. CARD. LEDOCHOWSKI.

[*Latin ed. p. 47*]

47 FROM THE SACRED CONGREGATION FOR THE RITUAL, a decree whereby Saint Vincent de Paul is declared the patron of all societies of charity. WORLDWIDE For the works of Christian charity, which acknowledge their origin from Saint Vincent de Paul, to be promoted with greater zeal, and to add honor to so great a father and teacher, two years ago, at the request of the members of the Vincentian Society, commonly called Conferences; on the occasion of the completion of the fiftieth anniversary of its founding in Paris; and also at the request of the Most Reverend Diocesan Ordinaries, Saint Vincent was declared and established, by Apostolic authority, as the special patron of all societies of charity existing in the region of Gaul, and of those which in any way derive from him. This decree, extended to the Diocese of Ireland the previous year, so that it might finally be extended to all societies and works of the same nature throughout the entire Christian world, was earnestly requested by many Fathers Cardinals of the Holy Roman Church, and by numerous Ordinaries from almost all regions of the world, and by the supreme superiors of several Religious Orders, who humbly presented their petitions to the Supreme Pontiff. His Most Holy Lordship Leo XIII, graciously receiving these, referred the matter to the Congregation of Eminent and Reverend Cardinals presiding over the sacred rites, so that they might express their opinion on this matter. The Sacred Congregation, in its ordinary meetings held on March 23, 1885, at the Vatican, with the Most Reverend and Illustrious Cardinal Charles Laurenzi presiding, and after hearing the Reverend Father Augustine Caprara, of the Order of the Holy Faith, and after mature deliberation on all matters, responded to the request proposed by so large a number of distinguished Prelates: "To be considered worthy of grace." These matters, immediately reported faithfully to His Most Holy Lordship by the Secretary of the Congregation of Sacred Rites, were approved and confirmed in all respects by His Holiness, who was pleased to declare Saint Vincent de Paul as the special patron, before God, of all societies of charity existing throughout the entire Catholic world, and of those which in any way originate from him.

[*Latin ed. p. 48*]

48. The Decree declared and established; with all due honors, pertaining

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to the heavenly Patrons: and it was ordered that Apostolic letters, in the form of a Brief, be issued regarding this matter, on the 16th of April of the same year, 1885. D. CARDINAL BARTOLINI, Prefect of the Sacred Roman College. L. S. LAURENTIUS SALVATI, Secretary of the Sacred Roman College. FROM THE HOLY CONGREGATION: A question concerning privileged altars, proposed by the General of the Order of Prémontré. MOST BLESSED FATHER Sigismund Stáry, Abbot of Prague and General of the Order of Prémontré, humbly implores before Your Holiness: 1. Whether, given the rubric in the Missal of the Order of Prémontré, which prohibits private Masses for the repose of the dead and votive Masses within all octaves of the first class, the religious of the Order of Prémontré can enjoy the favor of a privileged altar when, within such octaves of the first class, and in the absence of a double feast, they celebrate an octave Mass. 2. Furthermore, the petitioner humbly requests that this privilege be granted to them. And God; O Holy Congregation, entrusted with Indulgences and sacred Relics, responded on July 24, 1885, to the questions proposed: to 1, Affirmative, according to what has been explained, and let the Decree be given on April 11, 1864; to 2, Provision is made in the first. Given in Rome, from the Secretariat of the same Holy Congregation, on the same day, July 24, 1885. m m L B. CARD. FRANZELIN, Prefect. FRANCISCUS DELLA VOLPE, Secretary.

[*Latin ed. p. 49*]

49 FROM THE CONSISTORY ACTS: Concerning the Consistory held on the second day of the week, July 27, 1885. ADDRESS OF THE MOST HOLY FATHER, LEO XIII. Venerable Brothers, Since We, in this very office, spoke words concerning a matter which caused us just sorrow a short time ago, there have not been lacking causes which have renewed the old concern and distress of our spirit. — Among these, it is well known, is that public piety towards God, which is often permitted in states steeped in superstition and error, is not permitted in the city bearing the name of Christ. We understand that honors, customarily publicly celebrated with the august Sacrament at certain times when it is carried to the sick, have been abolished by decree. And this is much more grievous, because while legitimate freedom is diminished for religion, impunity is granted to impiety. — Were there not almost daily examples before our eyes, it would suffice to mention what we saw a few months ago; namely, that those most inimical to religion have been given power to freely convene in Rome, as many as they wished, seeking to attack the Catholic name, as it were, within its own stronghold, with hostile intent. These things occur at home; and not a few things happening abroad are equally far from joyful. — We feel considerable concern for France, on account of the many and grave obstacles which impede the progress of the Church. — Likewise, concerning Germany: for which, indeed, we desire and strive above all, that concord between the civil order

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and the Catholic religion may be restored to a lasting state; but great effort must be made in overcoming the difficulties. For these reasons, if ever it were necessary, certainly at this time, it is necessary to fight bravely, and, which is of great importance, harmoniously and with order, for justice and truth. We understand the power and magnitude of our offices; therefore, with great hope placed in God, We shall continue to devote the utmost of our care and thought to the exercise of our apostolic office; and likewise, as We have done thus far, so also in the future, We shall uphold the rights of the Church and of the Apostolic See, most diligently. *Acta, Vol. XVIII, p. 406.*

[*Latin ed. p. 50*]

50 FROM THE CONSISTORY ACTS, which we can defend with vigilance and vindicate with contention. — But concerning you, Venerable Brothers, how much you will be beneficial to Us through your study, counsel, and wisdom, We have long known through experience. — Nor without cause do We trust in the aid and assistance of distinguished men, whom, commended by virtue, prudence, doctrine, and love for this Apostolic See, We have decreed to co-opt into your most esteemed College today. These are: Paulus Melchers, Archbishop of Coloniensis; Alphonsus Capecelatro, Archbishop of Capuanus; Franciscus Battaglini, Archbishop of Bononiensis; Patritius Franciscus Moran, Archbishop of Sydneyensis; Placidus Maria Schiaffino, of the Benedictine Olivetan Congregation, titular Bishop of Nyssenus, Secretary of the Congregation for Bishops and Regular Canons; Carolus Cristofori, Auditor of the Apostolic Camera. What do you think? Therefore, with the authority of Almighty God, of the holy Apostles Peter and Paul, and Our own, We create and publicly proclaim the following as Cardinals of the Holy Roman Church: Paulus Melchers, Alphonsus Capecelatro, Franciscus Battaglini, Patritius Franciscus Moran, Placidus Maria Schiaffino, and as Cardinal Deacon, Carolus Cristofori, with all dispensations, derogations, and clauses necessary and opportune. In the Name of the Father, and of the Son, and of the Holy Ghost. Amen. Then the Most Holy Father proposed the following Churches: THE ARCHIEPISCOPAL CHURCH OF PALMIREN, vacant, through the death of the Most Reverend Marino Marini, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Father Antonius Maria Pettinari, of the Order of the Friars Minor Observant of Saint Francis, Archbishop of Urbinatensis. THE ARCHIEPISCOPAL CHURCH OF NAUPACTEN, vacant, through the death of the Most Reverend Henricus Ludovicus Carolus Maret, the last Archbishop, who died outside the Roman Curia, with the favor of the Most Reverend Father Antonius Sbrolli, Bishop emeritus of the Church of

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Soanensis-Pitilianensis.

[*Latin ed. p. 51*]

FROM THE CONSISTORY ACTS: The Metropolitan Church of Prague is vacant, due to the death of the Most Reverend Frederick John Joseph Celestine, Cardinal Priest of the Holy Roman Church, the last Archbishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father Francis de Paula and the Counts of Schoenborn, the Bishop of Bubovice, for the nomination of His Imperial and Royal Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary. The titular Episcopal Church of Himerius, under the Archbishop of Ephesus, is vacant, due to the translation of the Reverend Father Celestine Del Frate to the Cathedral See of Tivoli, with the favor of the Reverend Father Francis Vitagliano, the retiring Bishop of the Church of Nuceria Paganorum. The Cathedral Church of Nuceria Paganorum is vacant, due to the willing and joyful resignation of the Reverend Father Francis Vitagliano, which was carried out and accepted by His Holiness, with the favor of the Reverend Aloysius Del Forno, a priest of Naples. He, born of legitimate, Catholic, and honest parents in Naples, and having reached the forty-second year of his age, has for many years shown diligent service in missions. The Cathedral Church of Bubovice is vacant, due to the translation of the Reverend Father Francis de Paula and the Counts of Schoenborn to the Metropolitan See of Prague, with the favor of the Reverend Martin Riha, a priest of the Diocese of Bubovice, for the nomination of His Imperial and Royal Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary. He, born of legitimate, Catholic, and honest parents in Woslovi, in the district of Pisec, of the Diocese of Bubovice, and having reached the forty-sixth year of his age, having recently been awarded a doctorate in sacred theology, has hitherto been appointed Professor of Moral Theology at the diocesan theological institute. The Episcopal Church of Tinninien is vacant, due to the death of the Most Reverend Michael Kubinszky, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Father John Maiorosy, a priest of the Archdiocese of Colocensis and Domestic Prelate to His Holiness, for the nomination of His Imperial and Royal Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary. He was also appointed as a coadjutor to the Most Eminent and Reverend Lord Louis of the Title of Saint Mary of the Angels of the City of the Holy Roman Church, Cardinal Haynald, Archbishop of Colocensis and Bacsi, to perform pontifical and other pastoral duties in Colocensis and in its archdiocese, with his consent and willingness.

[*Latin ed. p. 52*]

62 FROM THE CONSISTORY ACTS: Then the Holy Father announced the appointments of churches, which had been prepared beforehand

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through Briefs, and they are: THE METROPOLITAN CHURCH OF OREGON, vacant, due to the return of the Most Reverend Charles John Seghers, formerly Archbishop, to the See of Vancouver, in favor of the Most Reverend William Gross, transferred from the See of Savona. THE ARCHIEPISCOPAL CHURCH OF STAUROPOLIS, vacant, due to the assignment of the titular see of Vestina to the Most Reverend Vitalis, Gervasius, and Protasus, to the Most Reverend William S.R.E. Cardinal Massaia, to whom the Reverend Father Francis Dominic Reynaud, Minor Canon, was appointed, transferred from the titular church of the Aegean Islands and from the Vicariate Apostolic of Philippeville and Sophia. THE ARCHIEPISCOPAL TITULAR CHURCH OF GRANADA, certainly vacant, for the Reverend Father Robert Menini, Minor Canon, Vicar Apostolic of Sophia and Philippeville, transferred from the titular church of Metellopolis. THE CHURCH OF THESSALONICA, titular church of an Archbishop, vacant, due to the succession of the Reverend Father Ferdinand Capponi to the Metropolitan See of Pisa, to the Reverend Father Dominic Ferrata, who has been appointed Apostolic Nuncio to the Most Serene King of the Belgians. THE METROPOLITAN CHURCH OF BUCHAREST, vacant, due to the death of the Most Reverend Ignatius Paoli, to the Reverend Father Paul Joseph Palma from the Congregation of Clerics Regular of the Passion of Our Lord Jesus Christ. THE ARCHIEPISCOPAL CHURCH OF SAINT DOMINIC on the island of the same name in America, vacant, due to the transfer of the Most Reverend Benvenuti Monzón and Martin, the current Archbishop of Seville, to the Metropolitan See of Granada, to the Reverend Father Ferdinand Anthony Arcturo de Merino, a priest of the archdiocese of Saint Dominic. He, having been born of legitimate, Catholic, and honorable parents in the town commonly called Llanosa, near Saint Lawrence of Boya, in the archdiocese of Dominicopolis, and having surpassed the fifty-second year of his age, was appointed Professor and Rector of the seminary of Saint Dominic; and, with the approval of the Holy Apostolic See, was elected President of that Republic, and has hitherto renounced his position as Canon Theologian, Dean of the Chapter, and Apostolic Administrator of the See of Dominicopolis and the archdiocese. THE METROPOLITAN CHURCH OF DUBLIN, vacant, due to the death of the Most Reverend Edward, a Cardinal Priest, while he lived, to the Reverend Father William Wolski. THE CATHEDRAL CHURCH OF SOUTHWARK, vacant, due to the death of the Most Reverend Robert Coffm, to the Reverend Father John Bult, transferred from the titular church of Miletus.

[*Latin ed. p. 53*]

FROM THE ACTS OF THE CONSISTORY:

53. THE CATHEDRAL CHURCH OF BASLE is vacant, due to the

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voluntary resignation of the Reverend Father, Doctor, Amabile, John, Claudius, Eugene Lactat, which was gladly accepted by HIS HOLINESS and by HIM admitted, and his subsequent promotion to the titular Archdiocesan Church of Damiata, favored by the Reverend Father, Bernard, Priderich Eiala, a priest of the Basle diocese.

THE UNITED CHURCHES OF ZACYNTHOS AND CEPHALONIA are vacant, due to a translation to the Metropolitan See of Corcyra, of the Reverend Father, Evangelista, Bon, of the Order of Minor Capuchins, in place of the Reverend Dionysius Nicolosi.

THE CHURCH OF NICOLETI, which has been enriched with the honor of a cathedral by HIS HOLINESS, was conferred upon the Reverend Elphego Gravel, a canon and parish priest of Saint Hyacinth, of that diocese, as its vicar general and doctor of sacred canons.

On Friday, July 30, 1885, in a public Consistory held in the Royal Hall at the Vatican, HIS HOLINESS presented the red hat to the Most Reverend Lords, Paul Melchers, Alphonso Capecelatro, Francis Battaglini, Patrick Francis Moran, Placido Maria Schiaffino, and Charles Cristofori, who had been created and declared Cardinals just four days prior, and where the Knight Philip Goazzini, Consistorial Advocate, presented for the second time the cause of beatification of the venerable Handmaid of God, Gertrude Salandri, of Rome.

After the public Consistory was concluded, in the upper buildings of the Vatican Palace, there was a secret Consistory, in which HIS HOLINESS, as is customary, with the aforementioned Most Reverend newly created Cardinals present, so that they might not express their own opinion in the Consistories, Congregations, or other functions of the Cardinalate, proposed the following churches:

THE METROPOLITAN CHURCH OF COLOGNE is vacant, due to the voluntary resignation of the Reverend Father, Doctor, Paul Melchers, which was gladly accepted by HIS HOLINESS and by HIM admitted, favored by the Reverend Father, Philip Krementz, Bishop of Varmiensis.

THE CATHEDRAL CHURCH OF PORTALEGRE is vacant, due to the death of the Most Reverend Joseph Maria da Silva Ferrao de Carvalho Martens, the last bishop of that diocese to have died outside the Roman curia, favored by the Reverend Father, Emmanuel Bernard de Souza Ennes, the bishop of Brigantia, for presentation to the Most Serene King Fidelis of Portugal and the Algarves.

[*Latin ed. p. 54*]

S4 FROM THE CONSISTORY ACTS, the Cathedral Church of Tulancingo, in the territory of Mexico, in North America, is vacant, due to the death of the Very Reverend John Baptist Ormaeechea, the last Bishop of that See, outside the Roman Curia, by the favor of the Most Reverend

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Augustine Torres, Bishop of Tabasco. The Cathedral Church of Brigantine is vacant, due to the translation of the Very Reverend Emmanuel Bernard da Souza Ennes to the See of Portalegre, by the favor of the Reverend Joseph Alves de Mariz, a Priest of Coimbra. To the aforementioned Church of Brigantine, by the benignity of HIS HOLINESS, promotion is granted, for the presentation of the Most Serene King of Portugal and Algarves, and the Cathedral Church of Saint Thomas of Guayana, in the territory of Venezuela, in South America, is vacant, due to the death of the Very Reverend Joseph Emmanuel Arroyo and Niño, the last Bishop of that See, outside the Roman Curia, by the favor of the Reverend Emmanuel Philippi Rodríguez, a Priest of the archdiocese of Saint James of Venezuela. Furthermore, other Churches were added by Letters in the form of a Brief, as follows, and are provided for: The See of Mobile is vacant, due to the translation of the Very Reverend Dominic Manuus to the titular Church of Maronien, for the Reverend Jeremiah O'Sullivan. The Church of Bathursten is vacant, due to the death of the Very Reverend Matthew Quinn, for the Reverend Joseph Byrne. The Church of Bredane is vacant, due to the death of the Very Reverend Henry van Beek; the Reverend Peter Ley was appointed. The titular Church of Sozusena is vacant, due to the death of the Very Reverend Francis Kerril Amherst, and is provided for the Reverend John Baptist Cazot, of the Society of Jesus, the Apostolic Vicar of Madagascar. The Bishopric of Acmonia, titular, is certainly announced; Julius Alphonsus Cousin, from the missions abroad of Paris, is appointed Apostolic Vicar of Southern Japan. The titular Church of Trapezopolis Island is vacant, due to the translation of the Very Reverend Severin Morawski, of the Latin Rite, to the Metropolitan See of Leopoli, and is granted to the Reverend Francis Sogàro, who has been appointed to the Apostolic Vicariate of Central Africa. The Church with the title of Thermopylae is vacant, due to the translation of the Very Reverend Anthony Joachim de Medeiros to the See of Maearn, and is granted to the Reverend Francis Anthony Hubert Boermans, a member of the intimate circle of HIS HOLINESS, the Prefect of the Chapter of Ruremond, appointed as Coadjutor to that Bishop, the Very Reverend John Augustine Paredis, with future succession.

[*Latin ed. p. 55*]

FROM THE CONSISTORY ACTS, the titular church of Cybirene, being certainly vacant, has had as its prefect, Most Reverend Richard Whelan. Most Reverend John Tuigg, Bishop of Pittsburgh, has been chosen as his coadjutor with succession. The church of Cardicium, being vacant due to the death of the Most Reverend Alphonse Maria di Donato, has been assigned to Most Reverend Augusto Bonetti, from the Congregation for the Missions, who was a parish priest in Salonichi. After this, the Holy Father, opening his mouth as is customary, and addressing the newly created Car-

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dinals, so that they might express their sentiments in the three Consistories, Congregations, and other Cardinalatial functions, wherever they might be, and granting them the precious ring, conceded and assigned to each the churches for the title of their Cardinalate; which follow: Saint Stephen in Monte Celio, vacant due to the death of the Most Reverend Emmanuel, while the Reverend Cardinal Gargia Gil, of the Order of Preachers, lived. The Archiepiscopal see of Caesaraugusta, to the Most Reverend and Most Eminent Cardinal Melchers. Saints Nereus and Achilleus, vacant due to the death of the Most Reverend Ignatius, while the Reverend Cardinal do Nascimento Moraes Cardoso lived. Saint Bernard ad Thermas, vacant due to the death of the Most Reverend Victor, Augustus, and Isidore, while the Reverend Cardinal Dechamps lived. Saint Susanna, vacant due to the death of the Most Reverend Bartholomew, while the Reverend Cardinal d'Avanzo lived. Saints John and Paul, vacant due to the resignation and translation, by virtue of option, of the Most Reverend and Most Eminent Lord Edward, the Cardinal Bishop Howard, to the suburbicarian see of Tusculum, to the Most Reverend and Most Eminent Cardinal Schiaffino. Finally, the deaconry of Saints Vitus and Modestus, vacant due to the transition to the order of the priesthood, the resignation of this deaconry, and the assignment of the title of Saint Praxedis, in favor of the Most Reverend and Most Eminent Lord Edward, while the Cardinal Borromeo lived, to the Most Reverend and Most Eminent Cardinal Cristofori. Furthermore, the pallia due to the metropolitan churches, or those provided for, or opened in both the secret Consistories, that is, for Dublin, Prague, Cologne, Oregonopolis, Saint Dominic, Bucharest, and the Holy Faith in America, were granted in favor of the Most Reverend and Most Eminent Lord John Baptist Salpointe, who succeeded the resigning Archbishop, the Most Reverend and Most Eminent Lord John Lamy.

[*Latin ed. p. 56*]

§6 FROM, THE CONGREGATION OF THE COUNCIL OF MILAN. Regarding the matter of the Fasting Days of December 20th, 1884, and April 18th, 1885, before the Mass (1). A SUMMARY OF THE FACTS. This matter had already been proposed at the plenary session of the Most Holy Council on July 7th, 1882, concerning an incidental question under the title "Concerning Decrees and Appeals" in a more acute dispute regarding the merits, on the aforementioned days. The matter was submitted to the judgment of the Fathers. We have included a synopsis of the incidental proposal in Volume 16, page 328. For the sake of brevity, we will now recall the main points of the facts. The matter of the natural fast before Mass was brought before the Archdiocesan Curia against the Reverend Father David A. The Curia had ordered the Ecclesiastical Tribunal to conduct an investigation and to render judgment on this accusation. The accused had proposed certain exceptions, which the Pro-Vicar General, President

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of the Tribunal, declared to be of little importance. Indeed, the accused had requested that the Assessor G. be removed from the proceedings, and that a certain Gervasius R., who was against him, be removed from the list of witnesses. However, certain M. and C. were admitted to testify in his favor. The Assessor G. and the witness Gervasius R., who were for the prosecution, were retained. An appeal was made from the decrees of the Curia to the Most Holy Congregation. On July 7th, 1882, the question was resolved as to whether the decrees of the Archdiocesan Curia should be upheld. (1) We have prepared a more detailed synopsis of this case concerning David, exposing the flaws, which his defender has skillfully brought to light, and refuting the dubious legal theories. From this, it is clear what the main point of contention was: namely, the manner in which criminal proceedings should be conducted to prevent any impediments to the judgment against priests, not directly, but through the absence in the process, against the priest, of matters that are fundamentally...

[*Latin ed. p. 57*]

MILAN. On the 5th of November, 1883, in the case concerning the Assessor Q. and the witness B., the response was affirmative; however, concerning the witnesses M. and C., the response was negative. Regarding the proceedings of this response, the aforementioned witnesses M. and C. were subjected to examination in the Court. In the meantime, the Provincial General, having been removed from life, the Archbishop, by decree of the 20th of October, 1883, appointed him, Joseph G., whom the accuser had sought to have removed from his office, to deliver judgment among the delegated judges. After the completion of the proceedings, a final judgment was issued on the 22nd of December, 1883, in which it was decreed: 1. "That the priest David A. has been legally convicted, based on all the evidence collected in the process, of the crime committed on the 20th of April, 1882, namely, the celebration of the Mass in the parish church of Saint Mary in the city of M., shortly after a natural fast taken publicly in a public thermopolium." 2. "That said priest has not been legally convicted of the same crime imputed to him for the days of the 12th, 13th, and 18th of April, 1882, since only incomplete evidence has emerged, supported by particular witnesses." "For the confirmation of this judgment, relating to the day of the 20th of April, 1882, the delegated tribunal, according to Canon *Nihil caus.* 7 *quest.* 1 *cap.* 16, *Nullus post cibum potumque quemlibet minimum sumptum Missam facere praesumat*, confirmed the letter of the now deceased Provincial M., dated the 1st of July, 1882, in which preaching was forbidden to the priest David A. throughout the entire Diocese; furthermore, the priest A. is remanded to his proper Ordinary, and the expenses of the process are condemned. " The president of the tribunal merely affixed his signature to the judgment. The priest A. appealed against this judgment to the Holy See, seeking to have it overturned in all respects.

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A Synopsis of the Arguments:

Regarding the first argument of the defense, the advocate proposed the following:

ARGUMENTS IN FAVOR OF THE PRIEST APPEALING.

[*Latin ed. p. 58*]

58. In Milan, upon examination, everything appeared tainted by suspicion, so that the intention to condemn seemed to be directed more towards the accusers than towards the accused. From the very beginning of the investigation, the court stated concerning the breaking of the fast, "that it was fully proven by witnesses," while regarding the witnesses themselves, "that they were superior to all objections." Furthermore, when the accused presented a witness in his defense, the court either attempted to remove him, as was the case with the witnesses M. and C., whom he did not hear until after the judgment of the Holy Order; or it sought to twist their words so that they would deviate from their intended meaning. Moreover, through circumstantial evidence, the court attempted to demonstrate that the events between the court and the witnesses were so arranged that they would not discover anything by chance, but would fulfill a preconceived task and report accordingly. Thus, on April 20th, the witnesses testified that they had seen David committing the crime; on the 21st, a warrant was issued for him to appear before the court. It is clear that within a single day, the witnesses completed their denunciation, the court accepted the denunciation, the matter was brought before the Archbishop of Milan, who ordered the proceedings to continue, and a written accusation was drawn up and delivered to the accused. This alone is sufficient to show the intention with which everything was conducted by the court: that the judges appeared to be chosen to condemn rather than to judge. When the matter was legally brought before the Holy Congregation, concerning the recusal of the Prelate G., the response was that there was no point in disputing the recusal, since he was not a true judge, but only an assessor or advisor to the investigating judge. Subsequently, after the investigation was completed, when the Archbishop constituted a panel of judges, he himself named the Prelate G. among the five delegated judges who would decide the case. However, it is understood that delegated judges are not obligated to participate in all cases, but only in specific judgments, and they can even refuse to participate without knowing the details of the case, in order to ensure greater freedom and fairness in the judgments; and if they do not recuse themselves, the proceedings will be declared null and void; as Cardinal De Luca states in *De Iudiciis*, book 3, number 63 and following. Similarly, the judge M. was chosen, with whom David refused to have anything to do, because he was also the parish priest of B., and

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openly favored the court.

[*Latin ed. p. 59*]

MILAN. Fifty-nine officials were found to be acting against each other. Thus, the scandal spread not only throughout the city but also within the Curia itself, and there were judges who did not hesitate to express their opposition to the judgment. The suspicion was further fueled by the fact that the judgment was issued contrary to the established disciplinary procedures, particularly in criminal matters, which require that the key points of the decision be clearly stated, and that all judges subscribe to it. In this case, not only were not all the judges present, but one judge, whose impartiality was certainly questionable, signed the document with the formula: "Delegate President Caietanus A., for the ecclesiastical judgment." In another section of the defense, the advocate argued that the judgment was invalid due to a lack of knowledge of canon law, or even of those principles of natural and civil law that must be observed in all judgments. To prove this point, he argued that it is sometimes more harmful to violate the order of justice than to violate the law itself, because when the order is violated, all violations and injustices are included, since nullity arises from a defect in essential elements that the law considers necessary for the truth, and consequently for justice; Scaccia de sentent, gloss. 14, quaest. 14, n. 56. Several of these grounds for nullity were present in the judgment of the Curia. First, the entire investigation was tainted, and consequently, the entire subsequent judgment was invalid, because, lacking the conditions established by law, the Curia was not authorized to initiate an investigation and to bring charges against David. In criminal proceedings, the order of judgments is typically divided into three stages: accusation, denunciation, and investigation. It is impossible to argue about the accusation, because, as Innocent III states in the decree "qualiter," "a legitimate accusation must be preceded by a written record" (Innoc. III in cap. qualiter 24 de accus.); in this case, no one publicly presented a complaint to the records, nor did anyone accept the burden of the judgment in their own name. Similarly, the form of denunciation was lacking, because both in writing and orally, there was no denunciation, nor was there the charitable warning that must precede the denunciation; Leuren, for. eccles, lib. 5, tit. 1, quaest. 35.

[*Latin ed. p. 60*]

60. MEDIOLANUM. Quare, igitur, tertiam formam, nempe inquisitionem, restat, quam Curia ipsa vere testari se adhibuisse, et viam specialem inquisitionis ad hoc officium. Sed specialem inquisitionem iniri non potuit, nisi generalis processisset; nisi scilicet, ut scribit Innocentius III in loco citato, iudex collegisset argumenta criminis *et infamia facti eum ad animadvertendum contulisset (Renazzi, *Elementa Iuris Criminalis*, liber 3, cap. 8, § 1). Nec generalis inquisitionis locum usurpare

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potuerunt delationes, ut docent Natalis V. et Gervasius R., ita ut in eorum fidem specialis inquisitio suscipiatur. Primo enim hi et in generali cognitione delatores, et in speciali testes editos fuisse, quorum unum alterum evertit. Deinde, non qualescumque, sed certissimas probationes habere opus est ad specialem inquisitionem instituendam, ita ut nihil pene desit quam rei confessio (Schmalzgrueber, *Tractatus de Criminis Probatione*, liber 5, titulus 1, § 224). Demum, ad inquirendum, talem esse oportet certitudinem criminis quae scandalum pariat, et rei infamiam inducat, non aliter obliterandam quam interposita iudicis auctoritate (Barbosa, *In Collectionem ad Tractatum de Criminis Probatione*, liber 5, titulus 1, cap. 24, num. 7 et seq.; Reiffenstuel, *Tractatus de Criminis Probatione*, liber 5, titulus 1, num. 191). Frustra igitur denunciaciones testium Natalis et Gervasii obieci, nisi de infamia in Davidem constaret, quia denunciatio non sufficit ad inquirendum, nisi reperta infamia (Schmalzgrueber, *Tractatus de Criminis Probatione*, liber 5, titulus 1, num. 202 et seq.). His conditionibus neglectis, omnia insanabili nullitate corruent, etiamsi in iudicio tam perspicuae probationes erumperent, quae accusatum omnino damnarent (Schmalzgrueber, *Tractatus de Criminis Probatione*, liber 5, titulus 1, num. 196; Barbosa, *In Collectionem ad Tractatum de Criminis Probatione*, liber 5, titulus 1, cap. 24, num. 5 et seq.). Luculentissimam etiam evidentiam fieri ex peculiaribus causae momentis. Nullam contra Davidem diffamationem prodiisse ante initam inquisitionem nec postea. Testes qui famam de violatione ieiunii percrebuisse contingunt inter se apertissime pugnare. Iosephum F. iam mense Martio rumores excitatus fuisse tradere: Gervasium vero R. a die 18 Aprilis. Biduo scilicet diffamationem ita excitatam esse, ac tantam in civitate admirationem peperisse, ut Curia...

[*Latin ed. p. 61*]

MILAN. 61, in order to compel them entirely. Those who undertook the office of informers usurped the role of witnesses and testified concerning reputation. Indeed, the reputation had been damaged, but after the instituted inquiry, and through the actions and counsel of the informers, who had worked to spread these matters through the publications of that time. Therefore, the Court, through its own actions, provided a cause for defamation by instituting the inquiry with such haste. The second cause for nullity is that the delegated judge did not question the witnesses, but rather diligently explained what they should affirm in order that the accused, David, might be condemned. This method is most odious and is vehemently condemned by the laws. For nothing is more contrary to justice and truth than suggestive questioning: and suggestive questions are considered to be those in which the judge asks the witness, suggesting or indicating what he should answer; Reiffenst. lib. 2 tit. 20 num. 516. In this case, the judge not only questioned the witnesses as to whether certain

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and particular facts were true, but also declared that these facts were already known to him through the formula "It is known to this Court that etc." Such deceptions are vehemently condemned by jurisprudence, lest the witnesses, by agreeing, easily give false testimony: whereas, rather, they agree with the one suggesting, lest he be displeased with them, rather than answering the one questioning from his own accord (Leuren. for. eccles, lib. 2 tit. 20 quaest. 651; Reiffenst. loc. cit. num. 518). And these are to be condemned even more severely, because "whether openly or obscurely and through hidden ambiguities, they always demonstrate deceit and trickery on the part of the one questioning, and undermine the authority of the testimony given; Renazzi elem. iur. crim. lib. 3 cap. 12 §. 14 n. 4. Nor does it matter that a special law perhaps does not define this nullity, since it is clear from the general law: whatever is committed contrary to a law prohibiting it is considered infected with nullity; Theodorus et Valent, in leg. 5 Cod. de legibus; Scaccia de sentent, glos. 12 n. 6 leg. 5 "Non dubium" Cod. de legibus, Salycet etc. In the third chapter of the defense, the matter was brought back to the truth.

[*Latin ed. p. 62*]

€2 MEDIOLANEN. The very decree issued by the Curia, in which the existence of the alleged crime was admitted, was restrictive, valid only for the day of April 20th, while the accusation stated that David had broken his fast on the days of April 12th, 13th, 18th, and 20th. Therefore, all matters must be excluded from the proceedings that do not strictly pertain to the day of April 20th. The advocate, proceeding to pronounce the sentence to be imposed, noted: the sentence contains 1° an interdict against preaching and catechesis; 2° the infamy of the crime, proven by legal conviction, etc.; 3° the obligation imposed on the accused to depart, and he departed with those words, being sent back to his proper Ordinary. As for preaching, it is futile to object that the interdict imposed on Priest A. is of no value, since it contains the mildest of punishments: for the judges could have chastised him with truth and serious censure, but they did nothing more than what is always permitted to the Ordinary by common law, to whom it is always free to grant the faculty to hold sacred sermons, and to take it away at his pleasure. Indeed, this objection fails both in law and in fact. It is true that bishops always have the power to grant, but it is not always and equally true that they have the power to revoke. The Council of Trent, in chapter 2 of the 5th session on Reform, orders that proceedings be initiated before a concession is revoked. Moreover, it is not only necessary to avoid depriving anyone of a concession they have received, but it is necessary to proceed with caution before depriving someone, lest a preacher be vexed by false information or other calumnies; Barbosa de Episcop. par. 3 all. 76 num. 49. Furthermore, it is well established in law that in any discretionary power, the judgment of a good man is always required, and that the power to

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revoke cannot be exercised so freely that one proceeds to revoke without any cause; Berardi in append. de benef. impropr. ad ius Eccl. univ. The same is true of the faculty to preach. In this case, it is futile to argue about discretion. A distinction must be made between a revocation carried out without cause, and another which is based not only on...

[*Latin ed. p. 63*]

MILAN. The cause, but on account of a crime and as a punishment, in accordance with the order of law. Therefore, since the matter concerns something that gravely damages the reputation of the accused, and if the accusation is refuted by evidence, it is necessary to remove the punishment, not only in revocation, but even in the very affirmation of the truth, as Ferraris, *Bibliotheca V.O.*, vol. 23, adds. To this, we must add the very serious damage to the reputation of the priest David. His reputation as a preacher shines throughout Italy. Since so many parishes are accustomed to calling upon him, the orator said, they will now learn that he has been removed from such a position because he committed a crime. In the third part of the judgment, the same priest, David A., is returned to his proper Ordinary, because, the defender argued, the precept aims to remove the priest from the diocese of Milan, and contains a most severe punishment. Indeed, David had moved from the diocese of Pavia to Milan, not only with the consent, but with the most enthusiastic recommendation of the Bishop. Therefore, the Archbishop of Milan cannot expel him; *Bouix de Episcop. par.*, 5, chapter 26, § 2. Having stated these points concerning the judgment, the orator, of his own accord, expanded on the foundations, saying: "There are two accusers, Natalis V. and Gervasius R., who followed David for a long period of time, investigated the crime, immediately brought it to the court, publicized it in the newspapers, and claimed to be witnesses. Besides these, no one said anything about the crime of April 20th. But if, in the ordinary course of legal proceedings, the legitimate testimony of two or three people can be admitted, it certainly does not hold in a criminal trial against a priest. For it is publicly known that those called by the Lord are anxiously defended against the envy or malice of accusers, who could easily find one or two witnesses for a single day. Therefore, to condemn a priest, at least more than two witnesses are required; St. Alphonsus de Liguori, *Theologia Moralis*, book 4, chapter 3, number 259. Another flaw in the evidence is that lay witnesses cannot be used against a priest in a criminal case; Alex. III."

[*Latin ed. p. 64*]

64. MEDIOLANEN, in chapter 14 concerning witnesses; Schmalz, Uh.2, title 20, number 50, and 51. Furthermore, a witness may be admitted as incompetent if he was neither able nor capable of appearing, that is, when it is proven that others not only did not appear, but were also unable to

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appear due to circumstances of place and time. For if it were sufficient to prove that others were absent to admit a witness as incompetent, all forms of incompetence would vanish, because the accuser would always contend that others were absent; Gratian, Disputations, book 1, chapter 525, number 7, and following, and chapter 374, number 11, and following. Ménoch, on arbitration, chapter 106, number 2, and following. In this case, it not only does not appear that the witnesses, namely the priests, were unable to be present, but, with regard to the principal aspect of the accusation, that is, the celebration of the Mass, the priests were certainly present, and indeed, they gave testimony in court. The orator continued to press more serious points. In the examination of witnesses, the greatest constancy and agreement among all is necessary, especially in criminal cases, because disagreement in such matters suggests the presumption of falsehood; Schmalz, book 2, title 20, number 134. But the witnesses, either one way or another, stated that David had taken a potion, and that the court had reported that the priest, David, had celebrated Mass wearing a white vestment. Natalis stated that he had seen David wearing a white vestment adorned with a golden ribbon; Gervasius, on the other hand, first described the vestment as being of a certain color, and then added that it was painted with flowers. There was also uncertainty about the hour at which David had celebrated Mass, and so on regarding other matters. The foundation of the evidence crumbled even because of the exceptions that order the removal of witnesses. It is established that Natalis and Gervasius, on the 20th, the day they claimed to have seen David anointed, immediately reported the matter to the court. This is evident from the fact that the following day, David was accused in court of violating his fast. However, such witnesses, demonstrating such suspicion and anxiety, do not deserve any credence; Reiffenst., book 2, title 20, number 415; Scaccia, on judgment, book 2, chapter 8, number 649, and following. Whatever may be the case regarding this, it cannot be denied that before giving their testimony, they reported the calumny to the court.

[*Latin ed. p. 65*]

MILAN. There were 65 present. But when a crime is reported in court and subject to punishment, a witness must never be admitted; Leuren, *Formularium Ecclesiasticum*, Book 20, Title 20, Question 585. This constitutes, at least with regard to Gervasius, the gravest exception to enmity and hatred. Indeed, not only written documents, but all of Gervasius' words most clearly demonstrate this enmity. The same is true of the most heinous accusation which he himself signed in the year 1880. Witnesses testified that they had repeatedly heard Gervasius reproach not only the *ephemeris* written by David, but also the author himself, whom he was prosecuting with insults. Indeed, in a criminal trial, an enemy, not only due to grave and capital animosity, but also due to a slight testimony, is prohibited from

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testifying; and if he does testify, he cannot be considered in any way; Reiffenst., Book 2, Title 20, numbers 39, 43. Finally, in the last part of his defense, the defender proposed to demonstrate that the arguments which were presented to prove the crime not only did not prove anything, but also served to protect the innocence of the accused. For the Curia had presented to David such positions that he could not, at least in part, deny them without incurring guilt. However, this was contrary to the truth and harmful to the accused, because, in his eagerness to accuse, the law was violated. Indeed, captious positions, those so contrived that the accused can scarcely respond without harming himself in some way, are vehemently rejected by the law. Certainly, if such positions exist, so that the accused, whether he answers affirmatively or negatively, cannot avoid harm, the act is null and void; Renazzi, *op. cit.*, Book 3, Chapter 9, § 3; Leuren, *Formularium Ecclesiasticum*, Book 2, Title 20, Question 644; Reiffenst., Book 2, Title 18, number 206. But nothing is more captious than the positions presented to David. And indeed: in the preliminary examination, when asked by the judge whether he had visited the *thermopolium* before Mass, he said that he sometimes went there, either to read the *ephemeris* or for some other reason, without breaking his fast. And when asked again whether this had happened on certain days of the month of April, he replied that he had not been there for forty days, and that he would neither admit nor deny it. Acts, Volume XVIII, page GOVI. 5.

[*Latin ed. p. 66*]

66. In Milan, it was possible that, not remembering the days on which he had visited the tavern before Mass, or the days on which he had omitted the celebration of Mass, the Inquisitor, in order to entirely anticipate the confession of the crime, attempted to encompass everything with a single question, specifying the days, the place, the hour, the type of drink, the route to the church, the altar, the sacred vestments, and adding this rule: "Answer purely and simply with the word 'I believe' or 'I do not believe'; and if the position, according to the opinion of the accused, were partly true and partly not, answer with the words 'I do not believe as it is stated.'" Therefore, the accuser argued, if David had answered, "I believe," he would have admitted everything. If he had said, "I do not believe," he would have denied what he had previously stated under questioning, namely, that he did not remember the days. Finally, if he had answered, "I do not believe as it is stated," since he could add nothing, according to the Inquisitor's instruction, he would have said that the position was partly true, which he could not admit. But David did not admit anything to his own detriment. Indeed, he deservedly scorned the Inquisitor's instruction, and gave the answer, "I do not believe as it is stated," excluding, with emphatic denial, the celebration of Mass after the infraction of the fast. Nor did he yield to what the Court opposed, namely, that he had not denied having

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drunk in the tavern. For, to prove the crime, neither one nor the other is sufficient, but both are required: the antecedent drink, and the subsequent celebration of Mass. The celebration of Mass was entirely excluded by most grave witnesses, priests, who had charge of the Church in which David had celebrated, and who explained the meaning of the Church's records. Finally, to condemn a man, and especially a priest, such proofs are required that they do not even allow for doubt about the crime committed. This has been demonstrated in many cases by the disciplinary law from the title: *Instructio pro Curiis Ecclesiasticis* (1), which the Sacred Congregation for the Holy Office published in an Epistola et Regulamento on June 11, 1880. Finally, it is to be presumed that this priest was not impious or wicked, but foolish, who, knowing that he was watched daily by his enemies, so that they might seek a cause to destroy him; (1) page 324 and following. This instruction, as has been noted several times, was published in Volume XIII.

[*Latin ed. p. 67*]

MILAN. 67. And furthermore, if he had wished to indulge in gluttony, he could have eaten at his own home and committed this shameful act in secret; on the contrary, he committed it in a *thermopolium*, as if eager to sin.

ARGUMENTS OF THE FISCAL PROSECUTOR'S COURT:

He who took up his defense stated that he could not entirely agree with the judgment of the Ecclesiastical Tribunal, which limited the infraction of the natural fast to the single day of April 20th. For the facts of April 12th and 13th were fully established by the witnesses F. and S. The fact of April 18th was established by the witnesses V., the Prelate N., and S., and, furthermore, all these arguments are consistent with the other fact admitted by the Tribunal, namely, April 20th. Nor can these witnesses be validly rejected as unreliable, for one type of witness is obstructive, while another is corroborative; for all these witnesses, from their own knowledge and observation, testify that the priest David had, on those days, first taken a drink, and then celebrated the holy Sacrifice of the Mass. Although these witnesses may have given their testimony on different days and from different locations, they are consistent with each other, the substance of the fact being repeated several times; therefore, they should be admitted as corroborative witnesses, as stated by Cardinal De Luca in *De Iudiciis*, section 32, numbers 60, 61, and 63.

But, the matter being limited to the single day of April 20th, the crime was fully established by two proven facts: the prior consumption of a drink in the *thermopolium*, and the subsequent celebration of Mass on the same day. Furthermore, when David himself was questioned in the second hearing, as to whether, on the morning of April 20th, 1882,

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at *octava* (eighth hour), he had broken his fast in the back room of the *thermopolium*, he responded: "I admit the fact, although he denied having taken a drink, as is stated, namely, before Mass."

The second fact was proven by the Rector of the Church of Saint Mary, in which David celebrated; for he stated that, from the records of that church, it was learned that David had celebrated Mass on April 20th. Furthermore, two witnesses, Natal V. and Gervasius R., who were consistent with each other, testified that they had seen him drinking in the *thermopolium*.

[*Latin ed. p. 68*]

68. MILAN. Concerning the alleged miracle preceding the Communion, and the subsequent celebration of Mass in the Church of Saint Mary. The testimonies of these witnesses agree in all respects: namely, regarding the day, the hour, the event itself, the preceding circumstance, and the subsequent event in the Church. The integrity and good reputation of these witnesses are demonstrated by the testimonies of the parish priests under whose jurisdiction they reside, as well as by the Prefect of the Work of Saint Vincent of Paul, the Archbishop, and the General Pro-Vicar. Given that these witnesses are of such standing, their testimonies are to be considered fully trustworthy in judicial matters, as taught by Saint Rota in the Roman document *Restitutionis dotis* of March 16, 1759, before Ratto, § 4, and elsewhere. Furthermore, these witnesses are entirely corroborated. They agree in all circumstances regarding time, place, and persons. Moreover, other witnesses confirm the main circumstances of the event. Paul testified that Saint Vincent was addicted to the thermopolium, that David entered the thermopolium at approximately the same time, and that an Arabic potion was consumed on April 20, consistent with the accounts of Natale V. and Gervasio R. The priests T. and R., attached to the Church of the Holy Sepulchre, testified that they saw David, as described by Natale and Gervasio, at the Church of Saint Mary at the same hour and on the same day. The same applies to the celebration of Mass. Indeed, when witnesses testify regarding their own experiences, and are corroborated by other witnesses, their testimonies are to be given full and unquestionable credence, as stated by Saint Rota in the Roman document *Eleemosynae missae Conventualis* of February 13, 1751, before Amadeo, and in the Vicenary *Praeeminentiarum* of March 12, 1759, before Paracciano, § 4. Therefore, all that is presented to the contrary must be disregarded, whether it pertains to impugning the witnesses or to undermining the credibility of the Church of Saint Mary's own records. For, the Rectors P. and M. of that Church, four months after the beginning of the process, newly presented evidence suggesting that there might be reason to doubt the reliability of the records concerning the celebration of Mass held on that day in the Church of Saint Mary, because the Rector had granted permission to his priests to celebrate Mass for the legation on any day. - Hence, the Masses were recorded in the

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book for the days to...

[*Latin ed. p. 69*]

MILAN. 69. It is understood that in the books, the number, and not the day, is to be considered as indicating the date of the celebration. David is not truly said to have celebrated on that day, because, otherwise, for those who attended the Mass, a more ample alms would be preferable to those offered for the benefit of the poor on the same day, and one would suffice. However, the irregular deposition of the Prefect, which undermines the credibility of his books, must be disregarded, because an imperfect proof is one that has a contrary possibility; De Luca, loc. cit., no. 20. Indeed, after a closer examination of the books of the witnesses, as the Archdiocesan Curia stated, the depositions of the Prefects P. and M. were entirely proven to be false. To deny the alleged restriction, which they call a "coarctation," it must be proven that it was done in such a way that it could not be reconciled in any other way; that is, it must be proven that David truly celebrated Mass in another church on the same day and at the same hour; Mascard, de probat., title: "Concerning the ways in which a negative proof is established," no. 1091. To attempt to prove that David followed a different route after drinking, by means of the witness X., who, being most devoted to David and contradicting the priests T. and R., must be rejected. The alleged contradictions presented by David's defenders between the depositions of Natalis V. and Gervasio R. are to be entirely disregarded for the purpose of defense, because they do not exist. Indeed, in all essential matters, they agree on the hour, the entrance into the tavern, the quality of the drink, the route to the church, the hour of the celebration of Mass, the color of the sacred vestments, etc. It is impossible for there to be agreement in every detail, when one person may have seen what the other did not see, or saw it in a different way, and may even have been deceived, not in the fact itself, but in the judgment of the quality of that fact; De Luca, de iudic., disp. 32, no. 51; Rota in Sabina, Pecuniaria, June 27, 1755, before Paracciano, § 7, and in Rome, Cambii, March 30, 1759, before Frangipane, § 4. Furthermore, there remain objections of lesser importance concerning the process for vengeance, concerning suggestive interrogations, and concerning those who were employed in...

[*Latin ed. p. 70*]

70. In Milan. In the process, the accusers are treated as witnesses, which is of no benefit. Two witnesses are required for a process aimed at punishment, according to Engel in *Ius Canon. Lib. V, tit. I, § 2* concerning accusations and inquiries, and that sufficient evidence of infamy or indications must be presented, and that the details of the inquiry regarding the accused, including the place, time, and circumstances, must be communicated, as well as the statements and names of the witnesses, so that the

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accused may object to the facts and witnesses in order to demonstrate his innocence. It is said that the reputation in the city of Milan, and elsewhere, was that he would be absolved after breaking his fast. Furthermore, it is the case of a priest from a different diocese, who was causing scandal to the clergy and faithful of his own city. Therefore, at the order of the Archbishop, the inquiry was initiated by the General Provisor on May 10th, and in the process, it was stated that vehement evidence had emerged against D. David, violating the natural law of ecclesiastical fasting, etc. Hence, all the procedures described by the authors were meticulously followed: namely, the formal examination of the fiscal witnesses, the establishment of two witnesses for the case, the examination of twelve other testimonial witnesses for the defense, the examination of Natalis, etc. Suggestive questions were never used with the witnesses. Nor is it the case that the accusers themselves were used as witnesses in the process, for it is unclear how the Archbishop first learned of the facts and ordered the process to be initiated. Nor can David's innocence be presumed simply because, if he had wished, he could have secretly consumed food and drink at home, even before Mass. Rather, he is already well known for other most shameful crimes for which he has been accused, and for which the judgment of the Court has imposed the mildest possible punishment. After these and other vigorously debated points, the intention is to clarify the doubt: whether the judgment of the Archbishop's Court should be confirmed or overturned in this case. The Most Reverend Fathers of the Sacred Congregation, in a general meeting.

[*Latin ed. p. 71*]

MILAN. On the 71st day, December 20, 1884, a response was given: The judgment must be overturned. CONTINUATION OF THE CASE. Having obtained a new hearing through the intervention of the Defender of the Public Prosecutor's Office, the case was again presented for examination of witnesses. ARGUMENTS OF THE PUBLIC PROSECUTOR. The Defender of the Public Prosecutor, by virtue of the authority granted by the Holy Office, maintains that, in order to re-examine a case of such importance, it must be held that the right to present new and valid evidence has been granted to the parties, and that this right is not empty or insignificant. In order to prepare a defense for the new case, the appellant needs new assistance, which was previously admitted by the Holy Office. Since, in the previous case, the danger to the Church was cited as a reason, the testimonies of only two witnesses were considered too weak; other witnesses are available, whom we can request to be heard, along with Natale and Gervasio, and with questions presented from various sources. The opposing party is also given the opportunity to present new witnesses if they wish. Therefore, we request a ruling to allow the presentation of testimonies from other witnesses, according to the instructions to be given to the Reverend Father Secretary. With the foregoing in mind, we sought

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to demonstrate the utility and importance of the requested examination for the correct determination of the case, through the extrajudicial testimonies of three new witnesses. Aloysius V. testified that he saw David celebrate Mass in the Church of Saint Mary on April 20th. The woman F. P. and Joseph B. testified that they saw David enter the thermopolium. It is certainly of benefit to receive the answers from Natale and Gervasio, as indicated by the Holy Office, so that any objections raised against their testimonies or other similar matters may be refuted. RESPONSE OF THE PARTY DAVID. He pointed out that, among other things, the Gregorian disciplinary law, which is used in ecclesiastical trials in Rome, in article 572, should be considered.

[*Latin ed. p. 72*]

72. MILAN. The precept contains: "It is forbidden to allow the examination of witnesses by the court after the conclusion of the trial." This prohibition also applies in cases where it is necessary to institute a new examination due to the nullity of the previous one. Regarding the pontifical law concerning the admissibility of witnesses, Reiffenst. lib. 2 tit. 20 §. 13 n. 457 states: "After the publication of testimonies and the testimonies have been heard, neither party can reproduce the same witnesses on the same articles or on those directly contrary, nor can they present new witnesses." Anth. de testibus §. Furthermore, Collát. 7 and Cap. Constitutis h. t. and Cap. ex tenore 35, joined with Gloss. fin. and Cap. Veniens 38 §, and Pars autem h. tit. with similar passages, held the same opinion. The Holy Office, in decree 47, number 11, before Marini, also held this view. This applies more strictly to criminal trials; in which case, if an exception is admitted, it is usually granted only for the purpose of defense (Reiffenst. lib. 2 tit. 19 n. 163). It does not infrequently happen that this rule is derogated from, but this is not valid: for certainly, the circumstances do not occur in such cases that would warrant a derogation. In these circumstances, those who request a new examination, and who themselves and by fact, profess that they have not yet suffered any harm, may, if permission is granted for a repetition, perhaps discover something. Therefore, it has always been the established jurisprudence to forbid, after the sentence, after the discussion of the cause, after the known mind of the judges, the admission of new examinations (Alexander III in cap. 17 de testibus; Barbosa in Collect, ad d. cap. n. 1; Rota in dec. 329 n. 1 seqq. part. 11 recent.). But, most importantly, the new witnesses presented, even if they were heard according to what they stated in the extrajudicial examination, will be of no use; because the deposition of Aloysius V., now presented for the first time after three years, clearly shows an example of suggestion in what he stated. The other two witnesses offer nothing that is beneficial to the cause. What has been said about new witnesses applies even more strongly to the new request for the examination of the witnesses for the prosecution (Natalis and Gervasii). It

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is well known in law that those who, once...

[*Latin ed. p. 73*]

MEDIOLANUM. 73. Contra aliquem in poenali inquisitione, dicunt se amplius audire non posse; *Renazzi, Elementa Iuris Criminalis*, liber 3, caput 12, § 6; *Barbosa, in Collectaneis*, liber 2, titulus 20, caput 10; *Scaccia, de Iudiciis*, liber 2, caput 10, numerus 50. Praeterea, quod omnia uno ictu refutavit, quae hic *Romae* aguntur nomine *Fiscalis Promotoris*, nullo iure agi. *Instructionem S. C. Episcoporum et Regularium*, editam die 11 Iunii 1880, praescribere: *Necessarium est ut omnis Curia suum Procuratorem Fisci habeat pro iustitia tuenda.* Iamvero huiusmodi officium Curiam in qua exercetur non excedere. *Procurator Fisci functum fuisse munere suo cum innocentis condemnationem obtinuit.* Penes *S. Congregationem Episcoporum et Regularium*, si ad eam res delata fuisset, *Fisci partes ab eiusdem S. Congregationis Procuratore fiscali geri.* Penes *S. Congregationem Concilii Curiae partes eo officio assumi.* Itaque legitima persona ad hoc in iudicio sistendum, *Fiscalem Curiae Procuratorem caruisse.* At etiamsi legitima persona praeditus consideretur, nihil ab eo amplius operari posse post accusati absolutionem, *Legem Gregorianam organicam et processum in iudiciis criminalibus* die 5 Novembris 1831 superius recensitam in art. 672 praecipere: *Condemnatus iuxta articulum 13 et Fiscus, sed hic pro solo civili interesse, cum occubuerit, potest coram tribunalibus appellationem interponere.* *Instructionem* diei 11 Iunii 1880 saepius adductam in art. 35 et sequentes, *uni reo appellandi facultatem concedere.* Rem ceteroquin esse de iure communi. Ita *Renazzi* in *Elementis Iuris Criminalis*, liber 3, caput 17, § 4, scribere: *Sententia absolutoria statim ac promulgata est ex recepta forma hodierni criminalis processus, transit in rem iudicatam ut heic notant rerum criminalium scriptores.* Tandem veniam a *S. Congregatione* concessam disputandi, certe non secum ferre, ut cum *S. C.* usitatae disciplinae aliqua ex parte derogaverit, liceat derogatione ipsa abuti per interpretationem, ita ut ubi provocandi locus non erat, liceat.

[*Latin ed. p. 74*]

74. MILAN. Adversus adversarios, novam inquisitionem, novam causam, aeternam vexationem postulavit. Cum ergo propositum esset: "An teneatur vel recedatur a decretis in casu dato," RESPONSUM: Die 1 Aprilis, Patres Sacrae Congregationis responsum ediderunt: "Ad decisiones et amplius." Ex HIS COLLIGITUR: I. Iudices delegati non ad universitatem causarum, sed ad peculiare iudicium, etiam sine cognitione causae, recusare posse, ad maiorem libertatem aequalitatemque iudiciorum. II. Interdum iniuriam gravorem inferre quae contra ordinem iudiciorum fiunt, quam quae contra ius, quia ordo substantiam afficit. III. Generalem inquisitionem semper speciali praeire debere: scilicet iudicem criminis

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argumenta colligere, et infamiam facti ad animadvertendum compelli. IV. Ad specialem inquisitionem instituendam, certissimas probationes requiri, ac tales ut nihil pene desit quam rei confessio. V. Licet libera sit semper facultas Episcopis concedendi, non aeque libera esse adimendi facultatem ipsis. Etenim sine noxa neminem esse privandum: et in quolibet arbitrio ad nutum, semper boni viri iudicium requiri. VI. Ad Sacerdotem condemnandum, plusquam duo testes requiri. VII. Nec testes laicos adhiberi posse contra Sacerdotem in causa poenali, nisi probetur, habiles testes neque actu, neque habitu intervenire in iudicio potuisse. VIII. Denunciatorem in iudicio et ad poenam, nunquam in testem admitti. IX. In iudicio poenali, inimicum, non solum gravi et capitali simultate, sed etiam levi, a testimonio ferendo prohiberi.

[*Latin ed. p. 75*]

MILAN. 75. Captious arguments, so skillfully constructed that the accused can scarcely respond without incurring some disadvantage, are vehemently condemned by law. 81. To condemn a man, and especially a priest, such proofs are required that no doubt whatsoever may arise concerning the crime committed. 82. It is forbidden to the tribunal to admit the examination of other witnesses after the closed proceedings and the commencement of the cause's discussion. This prohibition applies even more strictly after the sentence, that is, after the cause's discussion and the known mind of the judges. 83. It is the duty of the Fiscal Advocate of the Court not to leave the boundaries of his Court. 84. The acquittal of the accused, once pronounced and issued, becomes final and conclusive.

RIMINI. OF PUNISHMENTS AND REMISSIONS.

On March 7, 1885. Session 21, chapter 4, concerning Reform.

SUMMARY OF THE CASE.

Peter, a Canon of the Cathedral of Rimini, being 75 years of age, suffered from a disease commonly called hepatitis. At the advice of his physician, he lived in the countryside for several months in order to regain his health. However, despite this, the Chapter decided to fine him the sum of 24 scudi for an absence of four months. But considering himself unjustly burdened, he appealed to the Sacred Congregation, requesting the restoration of the aforementioned sum, and a provision to prevent future lawsuits, since he was compelled by the prescription of doctors to return to the countryside for the sake of the healthy air; and he appended to his petition the testimony of his physician, in which a statement is given concerning the illness and the method of treatment; and he also added two chapters excerpted from the Chapter's constitutions, in which it is stated that "any member of the choir, if detained by a true infirmity, and not feigned, shall not attend the

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choir."

[*Latin ed. p. 76*]

76. ARIMINEN. "He should be considered present," it was stated, "and should receive the distributions and the increase in distributions that accrue from the absence of others, provided that he had previously, while healthy, been accustomed to attending the choir. The Bishop, as required by custom, reported that Canon Petrus should not be granted an Apostolic dispensation to perform his distributions while absent, but only to rely on the attestation of a physician who had prescribed rest for him in the countryside. However, the Chapter stated that Canon Petrus had submitted to being examined, and that he had indeed spent time in the countryside for the sake of his health, and that he had celebrated Mass late in the evening, sometimes in one parish and sometimes in another, without detriment to his health. And he added that for two years he had refrained from participating in the choir, both from the obligation of singing the conventual Mass and from fulfilling weekly duties. He also stated that he had not previously been accustomed to attending the choir before his illness, but that during the ten years he served as treasurer, he had regularly and fully participated in the choir only on feast days; on weekdays, he had attended only once, when the capitulars were meeting. Having presented these facts, the Chapter instituted a *reconventio* (1) against Canon Petrus, because, in reviewing his administration while he was treasurer, it accused him of arbitrary and improper administration.

A SYNOPTIC ACCOUNT OF WHAT WAS DETRIMENTAL TO CANON PETRUS. In favor of this Canon, it was noted that all Canons absent from the choir due to illness should receive daily distributions as if they were present.

(1) By the action of *reconventio*, a mutual petition is made between the plaintiff and the defendant. The cited one is brought before the judge to request the same thing as the petition; because the Canon requested that justice be shown to him by the plaintiff in the *reconventio*, or as it is also called, a mutual petition; whereby the defendant becomes aware of the plaintiff's grievances; the Chapter, however, requested mutual punctations from the Chapter, debts owed by the Canon in relation to the administration of the chapter. Hence, the purpose of the *reconventio*, or mutual petition, is that both parties may obtain what they seek from each other.

[*Latin ed. p. 77*]

ARIMINEN. Seventy-seven were present in the choir. Indeed, Boniface VIII, in Chapter VI of the "Customs of the Clergy," after generally establishing that those absent should be deprived of distributions, immediately adds: "except those whom infirmity, or a just and reasonable, and bodily necessity... excuses," and this disposition is also confirmed by the Council

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of Trent in Chapter 12 of Session 24 concerning Reforms. And this seems to be excellently established, because even according to civil law, infirmity always excuses from office and duty, as stated in Law 2, §§. If someone is excused in civil matters, all the more so will he be excused by canon law, which proceeds from the Church, who, as the most tender mother, has always striven with all her power to kindly advise her children in their misfortunes. Indeed, by this reasoning, those absent should not only receive the daily distributions, but also an increase in distributions, which has been established by the Sacred Congregation, especially in Viterbo on August 22, 1621; in Acerno on March 14, 1739; in L'Aquila through Indulgences on June 16, 1745; in Trani on September 12, 1750, etc. And for this, it is not necessary that the illness be absolutely grave, but simply such that, by attending the choir, it could become more serious. Let Antonellus be heard, who in his book "On the Duties of Clerics," book 2, part 6, chapter last, number 123, says: "Indeed, a grave infirmity is said to be present in such a case, which is not only absolutely grave according to the judgment of physicians, but also which is absolutely mild, if, by attending the choir, it would become grave"; and this, as reported by Gare, in "On Benefices," part 3, chapter 2, number 363, has been declared by the Sacred Congregation. Thus also, the Sacred Congregation in Gubbio, concerning the service of the choir, on August 25, 1738, stated: "Indeed, even a prudent fear of a future infirmity excuses from attending." This is taught by Barbosa in "On the Office of Bishops," allegation 53, number 169; Pigliateli in "Consultations," 130, number 15; and Schmalzgrueber in "On Clerics not residing," title IV, number 36. Furthermore, this aforementioned disposition should not be considered to apply only in the case where someone is afflicted by illness.

[*Latin ed. p. 78*]

78. He ought to remain at home; but also, whenever it is necessary, this kind of Canon should go elsewhere for the sake of his health, for example, to the baths, or to a renowned physician, or even to escape the harshness of the weather and move to a more healthful location, as Barbosa states in the cited passage, no. 60, and Moneta in his *Tractatus de distributionibus*, part 2, question 6, no. 10. Furthermore, the physician testifies that Canon Petrus is truly afflicted with such a sickness, that although he is not obliged to remain at home, nevertheless access to the choir and residence in the city are forbidden to him. The physician also states that while the Canon resided in the countryside, he experienced a relaxation of his mind and even celebrated Mass late in the neighboring villages, and therefore suffered from an illness that, if not sufficiently serious according to the capitular constitutions, would not justify the loss of his daily distributions. For these require a serious infirmity that prevents the sick person from attending to his own affairs and from leaving the house, especially at night. It should be remembered that Canon Petrus, while engaged in these mat-

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ters, was fulfilling the injunction of his physician, who recommended that he go out and move about. Perhaps there is no greater reason to object, since previously, Canon Grossi also briefly interrupted his attendance at the choir; and this occurred for a just cause, namely, so that he could attend to the duties of the Chamberlain. It is well known that the Canon Chamberlain, when occupied with the divine offices in collecting the revenues of the Chapter, is excused from reciting the hourly prayers in the choir, and yet receives the distributions of Trullens, as stated in *Decalogi*, book 1, chapter 8, doubt 12, no. 9, in *Opuse*, decision 4, no. 16, and following; Barbosa, *De Canonibus et Dignitatibus*, chapter 24, no. 2. And this is so even if he could have performed such duties at another time, for if he were required to assist in the choir, as well as the other Canons, and to bear the burden of his office, he would be more burdened than the others, which is not fitting.

[*Latin ed. p. 79*]

ARIMINEN. 79 Sperell. dec. 44 n. 21 tom. 2; Scarfant. ad Ceccop. part. 1 lib. 2 tit. 10 n. 31. This is also confirmed by countless decisions of the Sacred Congregation and, in particular, by the Panormitana of 1588 and by the one from Tranen, dated December 20, 1862. Once it has been established that the Canon, Grossi, was legitimately absent from the choir in the past, it follows that he is entitled to the repetition of the distributions which the Chapter made during that period of his absence. It is a well-established principle in both civil and canon law that that which has been unjustly received must be restored, as stated in Rota, dec. 44 n. 9, part. 18, Rec.; L. 2 §. Also, if certain conditions are met, as in the case of temporary or less serious illnesses; Bartolus in L. Instrumenta, in princ. ff.; Molin. De iust. et iure, L. 1, tract. 2, discep. 83, col. 3. Provided that no one should become enriched at the expense of another, L. 41 and 56 ff. De condit, indeb.; and L. Cum lis 8 §. Indeed, these principles apply in cases of transfer. However, at least from what has been said, it seems that it is justly permissible for the Canon, in the future, to be granted leave of absence whenever he is afflicted by the same illness and requires the same remedies. For the Sacred Congregation has repeatedly recognized illness as a legitimate cause for granting an indulgence from absence, as is evident from numerous resolutions, and in particular from the Aquilana, dated June 26, 1745; from the Bononien, dated November 22, 1823, reported by Gamberini among the Summaria precum, n. 20; and most especially from the Nucerina, dated February 17, 1838, in which a very similar case is presented.

WHAT IS DETRIMENTAL TO THE CHAPTER. On the other hand, with regard to the Chapter, it must be said that not every illness excuses one from the service of the choir, but two conditions must be met in order for the infirm Canon to be able to benefit from this special indulgence. Firstly, it is necessary that there be legitimate proof of his illness, and of

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the impediment arising from it, namely, through the sworn testimony of trustworthy physicians, as stated by Antonell. de Distrib., lib. 1, part. 6, cap. ult., n. 123, and by many others, and as stated in S. C. C. in Reatina, dated March 6, 1667; in the Aquilana, dated June 26, 1745; and especially in the Avenionen, Servitii choralis, dated January 20, 1787, where the answer to questions 2, 3, and 4 is: no.

[*Latin ed. p. 80*]

80. ARGUMENT. Furthermore, and to be noted: it must be ensured that the testimonies from the physicians are subscribed with an oath, even if they are presented periodically and habitually; nevertheless, it remains within the power of the same Chapter for any Canon to visit the sick person, and if doubt arises, the Archbishop shall exercise his right. Secondly, it is also required that the sick Canon, while enjoying good health, was accustomed to attending the divine offices; otherwise, he does not earn the daily distributions; for illness is not the cause for not residing there, nor would he have resided there even when healthy, as John Andrew and the Abbot state in the chapter "Concerning those who do not reside" and in the chapter "When struck by a blow"; Fagnanus states in the chapter "Concerning Prebends," number 148: for then, as testified by Benedict XIV in *Institutiones*, 107, number 47, the absence is not attributed to illness, but to will. The Sacred Congregation of the Council also confirmed this in Mantua on February 6, 1627, stating: "Daily distributions are due to the sick Orator only if he was previously accustomed to serving the Church, the justification for which is left to the conscience of the Bishop"; and it confirmed this again in Ferrare on September 12, 1648, and in Rieti on March 5, 1667. Furthermore, the infirmity in this case is only proven by the testimony of one generic and unsworn physician: concerning the frequency, the Chapter stated that while Canon Peter performed the duties of the treasurer, he attended the choir on feast days, and once out of three times on weekdays, while his successors diligently attend the office and duly account for the administration of the Chapter's affairs; which he has not yet taken care to do. Moreover, the infirmity with which the Canon is afflicted does not appear to be of such a nature as to absolutely prevent him from performing choral service; for nothing of this is mentioned in the physician's testimony. Indeed, although the Church, as a most pious mother, indulges greatly with the sick, nevertheless, as testified by Benedict XIV in the aforementioned *Institutiones*, 107, number 47, she does not consider even the slightest pain, nor any cause of sadness, as a reason for exemption. Therefore, the same Pope, in the aforementioned place, notes: "not..."

[*Latin ed. p. 81*]

ARTICLE 81. It ought frequently to be considered as if present in the

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choir, he who confesses that he is sick, but he may wander about the city... nor should he be considered present, who, though he does not leave his house during the day because of his illness, yet does not fear to attend frequent gatherings at night, as experience sufficiently demonstrates.

This must be held even more firmly, since the capitular constitutions expressly state that "an illness, whether feigned or slight, which allows the infirm to attend to their own affairs, and to go out of the house, especially at night, is not considered a sufficient reason for excusing him from receiving the distributions while he is absent from the choir."

Since these things are so, and the chapter has rightly and justly decreed this, it seems that Canon Grossi is not subject to any restitution. However, conceding for the sake of argument that a restitution might be due to the canon, nevertheless, at present, "the chapter seems always to be able to object to him, and to deny him restitution until he responds regarding his administration and clears himself of the charges against him."

Indeed, the chapter seems to have instituted a counter-suit, when the canon Grossi presented himself as a debtor, according to what has been said in this matter. And the first effect of a counter-suit, as the Doctors unanimously teach, is that if the plaintiff does not wish to respond to the defendant regarding the counter-suit, then the defendant is not obliged to respond to the plaintiff in the original suit. For both cases must be treated and concluded together, as stated in cap. 1, title De Mut., petition 4, and the condition of the plaintiff and defendant must be equal, as stated in cap. 2, ibid., together with cap. ult. 5, end. Iurament. calumn.

Regarding the granting of an indulgence which the canon requests for the future, little needs to be said; for if the illness is considered to be of a milder nature, an indulgence certainly could not be granted: for this requires a just and reasonable cause: Fagnanus, in cap. Clericus, De cleric. non resid., n. 3.

With these observations, the following points will be discussed in the next section, Volume XVIII, page 6.

[*Latin ed. p. 82*]

ARIHINEN. Question I. Whether and in what manner the restoration of the points [of merit] granted by Canon Peter is permissible in this case. Question II. Whether and in what manner an indulgence of absence may be granted in this case. RESOLUTION. After deliberation, the Sacred Congregation, on the 7th of March, 1885, decided to respond as follows: To Question I: Negatively, in all respects. To Question II: Let recourse be made with a sworn declaration from two physicians. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. Generally, two things are required in order that a Canon may validly avail himself of the indulgence of absence from the choir due to infirmity, namely, that it must be established through

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sworn medical testimonies that there exists a genuine illness and a legitimate impediment arising from it; and that the infirm person, while enjoying good health, was accustomed to attending divine services in the choir. II. Indeed, although the pious Church indulges greatly to the sick, she does not consider even the slightest pain, nor any cause of sorrow, as sufficient; nor does she admit that illness is a reason for not residing [in the canonical residence] for one who did not reside there while enjoying good health. III. The infirmity of Canon Peter has not been confirmed by sworn medical testimony; nor did he have the aforementioned praiseworthy custom of attending the choir while enjoying good health; hence, rightly, the restoration of the points [of merit] granted by him was denied, and it was prescribed that he should, in the future, request an indulgence of absence, presenting a sworn declaration from two physicians.

[*Latin ed. p. 83*]

83 FROM S., CONGREGATION OF BISHOPS AND REGULARS OF ARI ATEN. PENSION. Dated 28 November 1884. Emus Brunelli, having obtained from the Most Holy Father Pope Pius IX the due authority, ceded, on 17 September 1856, with the consent of the priest Benedict Mannoni, his nephew through his sister, half of a pension of 50 scudi, which he himself received from the episcopal table of Cariaten. At that time, the Bishop complied with the cession and regularly paid the pension to the priest Mannoni; but upon the latter's death, the current Bishop, from the day he was elevated to the episcopal see, or from the month of March 1877, despite repeated requests from the petitioner, has consistently refused to pay it. Regarding this matter, the priest Mannoni appealed to the Sacred Congregation of Bishops and Regulars, requesting that the Bishop of Cariaten be compelled to fulfill his duty. SUMMARY OF THE FACTS. A Synopsis of the Dispute. WHAT IS ALLEGED AGAINST THE PRIEST MANNONI. The Bishop primarily observes that he is not obligated to pay the pension, because the revenues of the episcopal table of Cariaten, after political changes, have been so diminished that, according to the concordat with the King of Naples, entered into on 21 March 1818, they are not in a position to bear any pension obligations. He further alleges Article Four of the aforementioned concordat, which stipulates that every episcopal table must have a revenue, free from public burdens, of no less than 3000 ducats. He claims that this norm is also in accordance with the Regulation of 12 December of the same year, which prohibits the imposition of pensions on episcopal tables that do not have a revenue of 3000 ducats free from any public burden. Furthermore, with regard to...

[*Latin ed. p. 84*]

84. It must be ensured, the Bishop stated, that the revenues of the episcopal fund, after all expenses and taxes have been deducted, do not exceed

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the sum of 2126; and that the episcopal fund can, of its own accord, avoid being burdened by any pension obligations. Even if it were able to bear such burdens, nevertheless, after the death of the Most Reverend Brunelli, it was freed from such obligations by virtue of the royal decree of December 14, 1818, which stipulates that episcopal funds, which are subject to the payment of pensions, are freed from such obligations from the day of the pensioner's death. Therefore, he stated, it is irrelevant that the action of his predecessor was brought about by the priest Mannoni, whether because the Most Reverend Brunelli was still enjoying the benefits of this life when his predecessor accepted the cession of half of the pension, granted by the Most Reverend Brunelli to his nephew; or because a condition was added, as is clear from his own words, that the pension would be paid as long as the Most Reverend Brunelli, and not his nephew, was alive; or finally, because the episcopal fund at that time enjoyed revenues of approximately sixty thousand. Furthermore, he added that such a cession had not been properly carried out, and therefore lacked any validity, because the consent of the Neapolitan government was entirely required whenever pensions were assigned for the lifetime of the pensioner. He also added that, even if the validity of the pension were admitted, the priest Mannoni had lost any right to claim it, because, since he had not reported it to the Treasury, the episcopal fund had suffered a loss. Finally, in the condemned hypothesis that the cession of the pension is deemed to have been properly carried out and is still in effect, he invokes, due to the excessive reduction of the revenues of the episcopal fund, the application of the widely disseminated decree *Cum nuperrimis*, and specifically the resolution of the Episcopal and Royal Sacred Congregation of May 30, 1873: *Romana*, concerning the reduction, or suppression, of pensions, as was the case with the late Monsignor Di Pietro and the deceased Priest Durando.

WHAT FAVORS THE PLEAS OF THE SPEAKER. On his part,

[*Latin ed. p. 85*]

85. The priest Mannoni, a pensioner, argues that he is entitled to half of a pension of 10 scudi from the Bishop of Cariaten, because this half of the pension had been properly transferred to him by the Most Reverend Brunelli. He states that the late Pope Pius IX, through an Apostolic Brief beginning with the words "Circumspectionis tuae," granted the Most Reverend Brunelli the faculty, according to the Innocentian Constitution, and with the foresight of the Apostolic See, to transfer pensions to his relatives and family members, so that they might enjoy them as long as they lived. He further states that the aforementioned Most Reverend, in accordance with this pontifical concession, publicly assigned, through a published instrument, half of the pension of 50 scudi, which he himself received from the revenues of the Cariaten table, to his nephew Mannoni, together with all and each of the rights that belong to or may belong to the aforemen-

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tioned Eminence with respect to the aforementioned half of the pension. Therefore, given these facts presented regarding the validity of the transfer of the pension in favor of the priest Mannoni, there can be no doubt; nor can there be any doubt that he is entitled to enjoy such a pension as long as he lives; it follows that the Bishop cannot justly be excused from paying this pension.

He adds that the Bishop wrongly opposes the upholding of this pension transfer, claiming that it is invalid because it lacks the consent of the royal government, which is entirely required in concessions made for the lifetime of a pensioner; since it has been observed that, in this way, the supreme authority of the Church is subjected to unjust laws of civil power, which is an unfair assertion. Furthermore, it is useless to object based on the five-year prescription allowed by Article 2144 of the Italian Civil Code, both because the Bishop himself admits that the pensioner has been requesting the payment of the pension since 1880; and because the common doctrine of canonists is that a pensioner in possession of a pension justly due to him is maintained, as Fargna states in Part II, Canon 27, Chapter I, On the Rights of Patrons: "Nor can such maintenance be delayed or hindered under the pretext of asserted nullity of the pension, for this exception..."

[*Latin ed. p. 86*]

86. CARIATEN. It must be rejected that a petitioner, in order to obtain maintenance, should be considered to possess a pension, even if the pension is in his possession, even though it is being claimed against his heir; Tondut, *de pensionibus*, Chapter 37, paragraph 13; Cardinal De Luca, *de beneficiis*, Discourse 90, paragraph 14. *Rota Decis.* 547, paragraph 2. It is not permissible to argue that a pension holder has lost his right to receive the pension because he neglected to report it to the treasury; this obligation, indeed, rested not with the pension holder, but with the episcopal curia, whose interests were at stake. But, beyond this, it was noted in a case, when a temporary pension was involved, that it was more prudent to omit the notification, lest, on account of the temporary burden, the episcopal treasury be diminished more and permanently; hence, from such an omission, the curia derived not a loss, but a benefit. Considering the validity of the transfer of the pension to a *vado* (a form of property), it was determined that the Bishop must pay it in full, without any consideration of the application of the decree *Cum nuperrimis*, since the pension in question is so small that it would almost seem ridiculous to apply the sanction of the cited decree in this case. With these considerations presented on both sides, the following questions were proposed to be clarified. Whether and from what time the current Bishop of Cariaten is obligated to pay the pension of 25 scudi to the priest Benedict Mannoni. And, whether the decree *Cum nuperrimis* should be applied in this case.

RESOLUTION. The Sacred Congregation and the Religious Congrega-

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tion, having knowledge of the matter, on the day of November 28, 1884, judged it fitting to respond as follows: - To 1. Affirmative, from the day of acquiring possession. To 2. Affirmative.

FROM WHICH IT IS UNDERSTOOD: 1. Cardinals, in virtue of the apostolic constitutions, and by means of the concession of a brief, can transfer the pensions they enjoy to their relatives and family members.

[*Latin ed. p. 87*]

87. CARIATE. The effect of such a transfer shall endure even after the death of the Cardinal who made the transfer, if the transfer was made for life, notwithstanding any provision to the contrary in civil law. III. The possession of the pension shall not, for any reason, nor under the pretext of asserted nullity, be delayed or hindered. IV. The burden of notification prescribed by civil law rests not upon the pensioner, but upon him who is obligated to pay the pension. V. DECREE. In deciding these matters, it must be applied to the most recent precedents, without regard to the smallness of the pension, whenever the extreme circumstances established by the Decree itself are present. PORTUEN AND SANTA RUFINA CONCERNING THE VALIDITY AND PAYMENT. September 5, 1884. SUMMARY OF FACTS. The Church's property, seized by the Italian government, refused to pay the due parochial allowance to the Religious Reformers who were exercising pastoral care in the town of Fiumicino, from February 1871 until March 1875. However, after being summoned to court by the then-Most Reverend Bishop of Portuen, he was compelled to restore the allowance, although somewhat reduced, and to pay the sum of 7614 livres. From the remaining portion of this sum, after deducting the expenses of the lawsuit and the allowances paid to the Religious, the Most Reverend Bishop acquired and retained the sum of 4254 livres, so that the income from it would be used, first, for the sustenance of the Religious, second, for the expenses of worship, and finally, for the maintenance of guests. Soon after, the Religious, alleging pastoral duties, claimed that this sum was their own, and sought to obtain it from the Most Reverend Bishop.

[*Latin ed. p. 88*]

88. PORTUEN. The Bishop began to demand payment. However, since they could not obtain this from the aforementioned [official], the Provincial, through a humble letter, bearing the name "Religiosi," appealed to the Sacred Congregation of Bishops and Regular Canons, and to the King. After having received information from the aforementioned Bishop, and contrary to the requests of the Religiosi, the Sacred Congregation initially decided to postpone the matter, and then, in a second instance, to rule on it. The case seemed to be concluded, when certain individuals who claimed to be creditors of the Religiosi insisted before the Sacred Congregation, requesting that the sum of money be returned to them, which the

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Religiosi had lent them for their support. Upon receiving these new requests, the Sacred Congregation ordered that the case be presented at a plenary meeting of the Cardinals. A Synopsis of the Arguments. WHAT SUPPORTS THE REQUEST OF THE RELIGIOSI. From the side of the Religiosi, it was observed that the sum in question was not acquired through income properly belonging to the parish, but rather arose from money that was owed and which the Religiosi were obligated to pay. These debts were incurred because of unforeseen circumstances, so that the Religiosi would not perish from hunger, or be afflicted by fevers during the summer in the place of Fiumicino. The Provincial explains that, either because the parish income had not been paid for many years, and then was reduced by 1057.69 livres by the Italian government; or because of expenses that had increased daily, while the Religiosi residing in Fiumicino were burdened by grave necessities, the religious province was forced to incur a debt of 4524.39 livres, in order to provide them with the means to sustain life and to provide for a healthier dwelling in Rome during the summer, and to fully fulfill the burdens of the care of souls, which had been accepted by the Religiosi through a solemn agreement. In this manner, it was established that the money from which the sum in question was acquired was also intended to pay off debts; therefore, the Provincial insists that nothing is more consonant with equity and justice than for the sum of 4234 livres, by which the aforementioned sum is established, to be paid to the Religiosi.

[*Latin ed. p. 89*]

PORTUEN. 89. He seeks to confirm this from the fact that Emi Di Pietro, at that time Bishop, in order to meet the needs by which the Religious, entrusted with the care of souls, were held, considered it opportune to grant them a portion, so that they might provide for their necessary sustenance from the proceeds of its sale. WHAT IS OBJECTED TO THE PETITION OF THE RELIGIOUS. On the other hand, Bishop Emi of Portuen maintains that the prayers of the Religious should be repelled from the threshold of judgment, because the aforementioned grant cannot, in any way, belong to them. For he observes that a Religious, after having made the solemn vows, according to Chapter 6, is entirely incapable, not only of acquiring, but also of possessing any goods, whether movable or immovable. And indeed, the Provincial Superior can repeat this, adhering to the common principle: "A monk acquires whatever he acquires, the monastery acquires it." However, the same Emi observes that this principle does not have its full force in this case, because in Article 6 of the agreement initiated by the then Bishop Emi with the Superiors of the Order, it is expressly stipulated: "that all revenues (assigned to the Religious Chaplains) shall be allocated exclusively for the benefit of the Community of the Hospital, and that they shall not be spent by the Superiors of the Order for any other purpose." However, for other reasons, the Bishop adds, the prayers of the Religious should be repelled:

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because, indeed, they have not incurred any expenses, which, according to the agreement, they could have obtained, either for the maintenance of the Church, or the cemetery, or their dwelling, or for the furnishings, repairs, or acquisition of the Church. Moreover, they cannot change the situation regarding the debts which they claim to have contracted in order to obtain sustenance. Furthermore, he observes that they could have obtained these provisions for themselves from the pension granted to them by the Italian government, and that these debts were contracted without any reasonable cause or compelling necessity, since it is stated that they were regularly supplied with sustenance by the then Bishop Emi of Portuen.

[*Latin ed. p. 90*]

SO PORTUEN. Therefore, that an absurdity may not be admitted, whereby Religious either gain without cause, or whereby the same individuals may obtain the same benefit twice for the same reason, it is concluded that the consolidated sum of 4234 should be assigned to the charitable institution of the locality of Fiumicino. Having considered both sides of the matter, the following questions were proposed:

I. To whom does the consolidated sum of 4234 pertain in this case?

II. By whom must the creditors be satisfied in this case?

RESOLUTION. After mature deliberation, the Sacred Congregation of Extraordinary Affairs and Regulations decided on September 5, 1884, to respond as follows:

To the first question: The sum of four thousand two hundred and thirty-four (4234) pertains to the pious cause of the Chaplains of the locality of Fiumicino.

To the second question: See the provision in the first response.

FROM WHICH WE GATHER:

I. That a thing cannot be requested without a cause, nor can it be obtained repeatedly for the same cause.

II. That solemn vows render a Religious incapable, either of acquiring or of possessing goods of any kind.

III. That an Order loses the right to reclaim goods which pertain to Religious, if such goods have been transferred by a legitimate agreement.

—UTI, with the blessing of 300 days towards St. Joseph, as patron of the Cattolica Church.

Most Blessed Father,

Most Blessed Father,

To the Most Reverend Bishop of Salford, prostrate before the holy feet, humbly presents [this], and, kissing the feet of Your Holiness, with utmost humility, submits the following:

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The Bishops of Angliae are diligently engaged in prayer, occupied with the preparation of a monthly prayer book, in which they especially include prayers.

[*Latin ed. p. 91*]

FROM THE HOLY CONGREGATION OF INDULGENCES, We especially consider those prayers which have been enriched by the Supreme Pontiffs with the treasure of Indulgences. Now, in the most recent collection of prayers and pious works, etc., since there is not found a prayer addressed to Saint Joseph as the patron of the universal Church, the Bishop speaker humbly beseeches Your Holiness to deign to grant the Indulgence of three hundred days, applicable also to the souls of the departed, for the recitation of the following prayer.

"ROMAN PONTIFFS, formerly, by holy Indulgences, have enriched [us]." Indeed, since in those recently published prayers, devotions, and works, Saint Joseph is not found as the patron of the universal Church, but rather, as a patron to be sought, the same purpose is achieved through this humble supplication, which, if recited by anyone, may be granted to apply perpetually to the souls of the departed.

PRAYER TO SAINT JOSEPH, Spouse of the Virgin Mary, Patron of the Church.

TO SAINT JOSEPH, Most Blessed Spouse and Patron of the Church. O glorious Saint Joseph, chosen by God to be the foster father of Jesus, the most chaste Spouse of the ever-Virgin Mary, and the head of the Holy Family: and therefore, chosen by the Vicar of Christ to be the heavenly patron and protector of the Church founded by Jesus, with the greatest confidence, I implore your powerful help for the entire Church militant. Protect, I beseech you, with your paternal love, the Supreme Pontiff, and all the Bishops and priests united with the Holy See of Peter. Be the defender of all those who labor for the salvation of souls amidst the sorrows and tribulations of this life; and may it come to pass that all the peoples of the earth may willingly submit themselves to the Church, the absolutely necessary means of salvation for all.

[*Latin ed. p. 92*]

92 FROM St. GONG. INDULGENTIARUM: "Most beloved St. Joseph, deign to accept the consecration which I myself offer you. I dedicate myself entirely to you, so that you may always be my father, my protector, and guide on the path to salvation. Obtain for me a great purity of heart and a fervent love for the interior life. May all my actions, following your example, be directed to the greater glory of God, united with the divine Heart of Jesus, and with the Immaculate Heart of Mary, and with you. Finally, pray for me, that I may participate in the peace and joy which you enjoyed in your holy death. Amen. I also offer you, most holy Joseph,

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the gift of myself, which I willingly and completely offer to you; may you will that I be entirely yours, as your father, your protector, and guide on the path to salvation, and may you grant me purity of heart and a fervent love for the interior life. Following in your footsteps, may all my actions be directed to the greater glory of God, united with the affections of the divine Heart of Jesus and the Immaculate Heart of Mary. Finally, pray for me, that I may be a partaker of the peace and joy with which you were filled in your death. Amen. His Holiness Pope Leo XIII, in an audience held on July 18, 1885, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, has graciously granted to all the Christian faithful of both sexes, who recite this prayer, at least with a contrite and devout heart, an Indulgence of three hundred days, applicable also to the deceased, to be gained once a day. This grant is valid forever, without any further dispensation. Notwithstanding any contrary provisions. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on July 18, 1885. I. B. CARD. FEANZELIN, Prefect. FRANCISCUS DELLA YOLPE, Secretary. PRAISES in honor of Christ Jesus and the Virgin Mary, with an Indulgence of one hundred days. Most Blessed Father: The Roman priest, Peter Bugarini, prostrate at the foot of Your Holiness, humbly implores Your Holiness to deign to grant some Indulgence to all the faithful who recite the following praises in honor of Jesus Christ and the Most Holy Mary, for the reparation of offenses and blasphemies."

[*Latin ed. p. 93*]

9a FROM THE SACRED CONGREGATION OF INDULGENCES, concerning the offenses committed, especially through blasphemies. Praise be to Jesus, to whom this is particularly due. These same individuals, preceded by blasphemies, are unwilling to concede anything to Christ. Praise to Jesus Christ. Let Jesus, the Son of God, be praised – True God and true Man – Author of life – Eternal Wisdom – Infinite Goodness – God of peace – Good Shepherd – Most loving Father – Our Savior – Our hope – Our love – Our life – Our beginning – Our end – (To each praise, the response: Let Jesus be forever praised). Let Jesus, the Son of God, be praised – True God, true Man – Author of life – Eternal Wisdom – Infinite Goodness – God of peace – Good Shepherd – Most benevolent Father – Our Savior – Our hope – Our love – Our life – Our beginning – and Our end. (To each of these, the response: Let Jesus be forever praised). Praise to the Most Holy Mary. Praise to Mary, Virgin. Let Mary be praised, Daughter of the eternal Father – Mother of the Incarnate Word – Bride of the Holy Spirit – Co-redemptrix of the world – Immaculate Queen – Full of grace – Refuge of sinners – Most clement Mother – Consoler of the afflicted – Salvation of the troubled – Propitious star in adversity – Safe harbor for travelers – Our comfort in life – Our hope in death. (To each praise, the response: Let Mary be forever praised). Let Mary be praised, Daughter

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of the eternal Father – Mother of the Incarnate Word – Co-adjudant in redemption of the Holy Spirit – Immaculate – Refuge of sinners – Full of grace – Queen of the world – Most clement Mother of the miserable – Salvation of the afflicted – Propitious star in adversity – Safe harbor for travelers – Our comfort in life – Our hope in death. (To each of these, the response: Let Mary be forever praised). His Holiness Pope Leo XIII, in an audience held on July 18, 1885, by the undersigned Secretary of the aforementioned Sacred Congregation for Indulgences and Sacred Relics, has graciously granted to all Christians of both sexes who, with at least a contrite heart and with devotion, shall recite both of the aforementioned praises, a plenary indulgence, once a day. This grant is valid forever, without any further indult. Notwithstanding any contrary provisions. Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on July 18, 1885. I. B. CARD. FRANZELIN, Prefect. FRANCISCUS DELLA VOLPE, Secretary.

[*Latin ed. p. 94*]

94. In Oria, a doubt arises concerning the vestments that a priest must wear in order to gain the plenary Indulgence of the privileged altar. In Moral Theology, by Peter Scavini, edition 11, book 1, chapter 3, page 229, paragraph 283, the following is found, as written in the book published by Ernest Oliva in Milan in 1869: "From the response of the Holy Congregation of Indulgences, dated April 11, 1840: A priest must celebrate in black vestments on days that are not prohibited, in order to gain the plenary Indulgence of the privileged altar. Therefore, the following is asked: 1. Should the color black be understood in an exclusive sense, so that a priest does not gain the plenary Indulgence of the privileged altar if, for example, he celebrates Mass for the Requiem, administering the Eucharist by way of the sacrament, wearing violet vestments? 2. If someone does not gain the plenary Indulgence of the privileged altar in this way or in any other way, can he make satisfaction by applying another plenary Indulgence for the deceased, for whom he was obliged to celebrate at the privileged altar? The Holy Congregation of Indulgences responded on May 2, 1852: To question 1: In order to enjoy the benefits of the privileged altar, the priest must celebrate Mass for the dead on days that are not prohibited, and must wear black vestments, or, for a reasonable cause, violet vestments. To question 2: No. Joseph Cañcus Ribezzo humbly requests that the Holy Congregation of Indulgences deign to declare: Is this response, concerning the second part, apocryphal? And, if it is negative, should it also be understood for priests who were obliged to celebrate at the privileged altar and have already celebrated, but not in black vestments on days that are not prohibited? And, if it is affirmative, how can it be reconciled with the decree of the same Holy Congregation of Indulgences, dated February 22, 1847, in which, in response to the question: If a priest, on permitted days,

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did not celebrate in black vestments at the privileged altar in order to gain the plenary Indulgence, to what is he bound? The response was: He must gain the plenary Indulgence for those deceased for whom he applied the fruits of the Mass, as many times as he did not use black vestments on days that were not prohibited. The Sacred Congregation for Indulgences and Sacred Relics, in response to a proposed doubt on July 24, 1885, replied: The response is authentic. However, in the decree of February 22, 1847, the Holy Congregation granted only to priests, concerning whom it was asked about the way in which they should compensate for the plenary Indulgence of the privileged altar, to which they were obliged to apply, and which, through good faith error, they had not gained, that the compensation should be made by applying another plenary Indulgence as many times as they had not gained the plenary Indulgence of the privileged altar. Given in Rome, from the Secretariat of the same Holy Congregation, on the same day, July 24, 1885. J. B. CARD. FRANZELIN, Prefect. JOSEPHUS M. CAN. COSELLI, Substitute.

[*Latin ed. p. 95*]

95 FROM THE SACRED CONGREGATION FOR RITUALS, a decree for the cities and the world, by which it is commanded that the most holy Rosary be recited in parish churches throughout the entire month of October of any year, until the Most Holy Pope obtains freedom. Among the many acts of Apostolic vigilance, by which the Most Holy Pope Leo XIII, from the beginning of his pontificate, strives to serve the Church and the entire society, with God's help, in restoring the desired tranquility, shines with a clearer light the Encyclical Letter of the Supreme Apostolate, dated September 1, 1883, concerning the celebration throughout the month of October of that year of the glorious Mother of God, Mary, Most Holy Rosary. This, indeed, has been especially instituted by the special providence of God, to implore the most powerful Queen of Heaven's help against the enemies of the Christian name, to safeguard the integrity of the faith in the Lord's flock, and to rescue souls redeemed by the precious blood of the Divine Savior from the abyss of eternal perdition. Then, the most joyous fruits of Christian piety and confidence in the heavenly patronage of the Virgin Mary were gathered in every place of the Catholic world through this salutary work during that month; and because of the calamities still present, in the following year, 1884, on August 30, other Apostolic letters were issued, following the previous ones, with the same exhortations and instructions, for the approaching month of October, to be observed with equal solemnity, with fervor of ritual and piety, in dedicating honor to the most blessed Virgin Mary of the Rosary; because the principal fruit of this good work and the pledge of a future victory lies in perseverance in these endeavors. Moreover, the Most Holy Pope, seeing that from now on many evils disturb us from all sides, and yet wishing that this faith, which works

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through charity, and veneration and confidence in the most loving Mother of God, may remain and flourish in the Christian people, desires with all his might and zeal that everywhere we persevere in prayer with Mary, Mother of Jesus. For we are certain that she, who alone extinguishes all heresies throughout the world, will, through our worthy fruits of penance, finally appease the wrath of divine justice, and bring safety and peace. Therefore, His Holiness commands that whatever has been established in the past two years concerning the month in which the solemnities of the Virgin Mary of the Rosary are celebrated, be observed likewise this year, and in the years that follow.

[*Latin ed. p. 96*]

96. DECREE: And it is decreed and established that, as long as these most grievous circumstances concerning the Church and public affairs endure, thanksgiving shall not be given to God by the Church for the full liberty restored to the Supreme Pontiff. Therefore, it is decreed and commanded that, from the first day of October until the second day of the following November, in all parochial churches throughout the Catholic world, and in all public oratories dedicated to the Blessed Virgin, or in other places also chosen at the discretion of the Ordinary, at least five decades of the Rosary of the Blessed Virgin, together with the Lauretan Litany, be recited daily: and that, if possible, Mass be celebrated in the morning among the prayers, and if not, that the most holy Sacrament of the Eucharist be exposed for adoration, and then the faithful be duly instructed. It is also desired that these devotions be publicly led by the religious confraternities of the most holy Rosary, wherever it is permitted by civil laws. To all those who attend the public recitation of the Rosary on the designated days, and who pray according to the intention of the same Holiness, and also to those who, for a legitimate reason, perform these devotions privately, a single Indulgence, renewing those previously granted, of seven years and seven quarantines is granted each time. But to those who, during the aforementioned time, have recited at least ten decades, either publicly in churches or privately for a legitimate reason, having made their sacramental Confession and having received Holy Communion, a plenary Indulgence is granted from the treasures of the Church. This most complete remission of sins and penalties is likewise granted to all those who, either on the feast day of the blessed Virgin of the Rosary, or on any one of the eight following days, have received the Sacraments as mentioned above, and who have prayed to God and to His most holy Mother in some sacred place according to His intention. With regard to this, and also considering the faithful who live in the countryside and are especially occupied with agricultural work during the month of October, Holiness grants that all the things mentioned above, together with the sacred Indulgences, may be deferred in those places to the following months of November or December, at the prudent discre-

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tion of the Ordinaries. Concerning all these matters, the Most Holy Lord, through the Sacred Congregation of Rites, has issued this decree, and has commanded that it be transmitted to all Ordinaries for faithful execution. August 20, 1885.

D. CARDINAL BARTOLINI, S.R.C., Prefect.

LAURENTIUS SALVATI, S.R.C., Secretary.

[*Latin ed. p. 97*]

97. FROM THE PROCEEDINGS OF THE CONGREGATION OF THE COUNCIL, OR THE COLLEGE OF CARDINALS, APRIL 18, 1885. SESSION 24, CHAPTER 16, CONCERNING REFORMS. SUMMARY OF FACTS. Due to the death of the Eminence Cardinal Di Pietro, the Episcopal See of Veliterna became vacant. On March 10, 1884, the canons convened for the election of a Capitular Vicar. Eleven were present, and each secretly wrote their choice on a ballot and placed it in the urn. It should be noted that, according to the laws, in Veliterna, elections for capitular offices and deliberations on more serious matters must be held by secret ballots, as evidenced by the records of the Election of Veliterna, presented before the Sacred Congregation of the Council on December 17, 1881 (1). Indeed, on this occasion, after the Archpriest collected the ballots, it was discovered that five votes had been cast for Canon Di Lazzaro, in the presence of the secret members of the Chapter and the electoral body; five for the priest Ian noni, who was absent; and one for Canon Vita. When Canon Di Lazzaro learned this, considering it futile and with little or no hope of a different and better outcome, and in accordance with the constitutions which state: "If the votes are equal, the Vicar shall hold another scrutiny," he declared that he would vote for himself, in the manner prescribed in Chapter 33 of De elect., or, in other words, to transfer his vote from Canon Vita to himself. Thus, he was elected Capitular Vicar by a majority. However, doubts arose regarding the legitimacy of such an election, and the matter was submitted to the judgment of the Sacred Congregation of the Council (1). You have the question in Volume XV, page 100. Acta, Volume XVIII, page C.

[*Latin ed. p. 98*]

98. VELITERNA. A Synopsis of the Discussions. Innocent III, in the celebrated chapter "Quia propter," which the Doctors consider to be a crucial and fundamental rule regarding elections, states: "Because of the various forms of elections which some attempt to devise, and because many obstacles arise and great dangers threaten widowed churches; we decree that when an election is to be held, in the presence of all those who ought to be present, and who desire and are able to conveniently attend, three individuals should be chosen from the College, men worthy of faith, who, in secret and individually, diligently inquire into the votes of all, and who,

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having recorded them in writing, shall promptly publish them publicly, without any obstacle whatsoever; so that he may be chosen, with whom all, or the greater and healthier part of the Chapter, agrees. Or, at the very least, the power of electing should be entrusted to certain suitable men, who, in place of all, will provide for the widowed church with a pastor. Otherwise, the election is invalid; unless, perhaps, it was commonly and unanimously celebrated, as if by inspiration, without any defect. But those who should attempt to elect contrary to the prescribed forms shall be deprived of the power of electing in that instance." From this chapter, the authors deduce that there are three forms of election: namely, by almost inspiration, by scrutiny, and by compromise. The first form is extraordinary; the second is more common; as for the last, Vecchiotti, Volume I, page 37, (1), states: "If, after repeated meetings and scrutinies, the electors do not succeed in reaching a desired outcome, then the third form of election, namely, compromise, is particularly appropriate; which is celebrated when the election is entrusted to one or more individuals, even those outside the body, but who are nevertheless clerics (chapter 12, De elect.)." However, it must be carefully noted that the disposition in chapter "Quia propter" applies when it is a matter of the election of Bishops, or of those Prelates whose death is considered to leave the church widowed; *ELECTOR SIBI SUFFRAGARI POSSE VIDETUR*. (1) Regarding the manner of carrying out the second form, the authors differ; but they agree on the essential elements, as described by De Angelis, in "De electione."

[*Latin ed. p. 99*]

In VELITERNA, ninety-nine widows are present. This is mentioned in the common passage following the gloss on chapter five of the book "Ecclesiae viduatae" [Concerning Widows of the Church]. Therefore, when it is a matter of the election of such individuals, one of these three forms, with all its rights and solemnities, must be strictly observed; "otherwise, the election is invalid," as the Pope states in the cited chapter, at the end. But when it concerns elections for minor benefices, or for capitular offices and similar positions, the strictness of the law is not necessarily observed, as the Doctors teach unanimously in the title "De elect." [Concerning Elections]; but it is essential to observe only that which is essential in an election, namely, the consent of the majority of the electors. The practical form for conducting an election is usually determined by specific statutes, or is left to the will of the chapter. And so, sometimes it is done "by openly declaring one's opinion through a vote of the living voice"; sometimes through balloting, in which, for example, a name is proposed for a canonry, benefice, office, or ministry, and each individual places their vote, or a white or black ballot, indicating approval or disapproval, in an urn, as Scarfantonio states concerning Ceccop., book 4, title 6, paragraphs 10 and 16; or sometimes it is done through a secret ballot, which, however, is distinguished from

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a solemn process, because it is not bound by so many legal prescriptions, but usually consists only of secretly writing names on slips of paper, which are then placed in an urn. A special form of access is mentioned in chapter 6 "De elect." [Concerning Elections], and which is exemplified in the provision of the Apostolic See, and is found to be specifically determined in the "Caeremoniale elect. Rom. Pont." [Ceremonial for the Election of the Roman Pontiff]. Indeed, when, after a public scrutiny, no one is found to be elected by two out of the three parts of the electors, which is required for the election of the Roman Pontiff, the Cardinals can cast a new vote in the accessus, and thus complete the required number of votes. Having explained these matters concerning the various methods of elections and the law applicable in each case, the way is prepared for the question that is raised in the present case, namely, whether it is permissible for an elector to vote for himself in order to obtain a majority. This question is usually answered with distinction;

[*Latin ed. p. 100*]

100. VELITERNA, because, through a process of election that is almost akin to inspiration, where there is no opportunity for anyone to give a vote, it is peacefully established in a solemn scrutiny among the Fathers that no one can ever, under any pretext, cast a vote for themselves; nor, indeed, before the publication of the scrutiny, because no one can write their own name on a secret ballot; but neither after the publication of the same, because, as stated above, it is not permissible to change the vote once the scrutiny has been made public. And this is taught by those very Canonists who, in other forms of election, hold that anyone, given an equal or nearly equal number of votes in their favor, can certainly transfer their vote to themselves; Pirhing, *De electione*, nn. 217, 218, and others cited below. But in a compromise, the matter appears to be different. For Innocent III, in the famous chapter *Cum in iure* 33, *De electione*, writing to the Bishop of Bayeux, as it is written in the rubric, states that if from seven compromisers, three choose a fourth, and that one consents and is deemed suitable, the election will be confirmed. "Since you are learned in the law, and have access to experts, we cannot but marvel that you wished to consult us on certain articles of law, which are known to contain no doubt or very little doubt. Indeed, the first article of your consultation contained this: that, after the death of a certain Church Dean, the Chapter of that place compromised in this way among seven of its own canons: that whoever was nominated by all, or by the majority, of them, either from within or from outside the Chapter, should be received as Dean. Therefore, when one of those seven was nominated as Dean by three of them, and another, who was not among that number, was nominated as Dean by three others, you inquired which of them should be accepted as Dean. To this, we respond as follows: that the one who was nominated as Dean by three of them,

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according to the terms of the compromise, should be accepted as Dean, provided that he consents to the election made in his favor and that no canon obstructs. Therefore, almost all of the Fathers, without distinction, conclude, according to the terms of the compromise, that the one nominated by half of those electing..."

[*Latin ed. p. 101*]

In Minori, it is possible, by converting votes to oneself, to increase the number of votes and thereby obtain a majority. The aforementioned canonists do not stop here; but many of them, proceeding further, state that the disposition in *Capitulo Cum in iure* applies to those forms of election which can be considered less solemn, and also to those which, as mentioned above, are used in the provision of minor benefices, canonries, offices, or ministries. Indeed, the Sacred Roman Rota, in Decree 114 of Pope Clement XIII, states: "The disposition of the text in *Capitulo Cum in iure*, which states that the vote of the elected one sometimes increases the number of those who elect, applies where the election is made by agreement, or by some similar public method, and by public votes; but not where the election is made by secret ballot." This extension is not asserted arbitrarily, but based on the principle that where the reason for a law is the same, the disposition of the law should also be the same; and because Innocent III, in *Capitulo In causis 19 De sententia et re iudicandi*, declared that the judgment of the Pontiff is law not only in the case for which it was produced, but in all similar cases. Therefore, at least when an election is made publicly and openly, as in the case of *Capitulo Cum in iure*, and it is found that there is a tie in the votes for one of the candidates, it would seem that the disposition of that same chapter should be applied. Moreover, some Doctors assert that civil law openly favors this principle; Gonzalez in *Capitulo Cum in iure*, number 5. Do not say that it seems completely absurd, and that it is a presumptuous act to give a vote to oneself. Since, where the law permits it, there is nothing further to be questioned. And, as Bouix rightly notes in *De capitulis*, page 5, section 1, chapter 17, paragraph 2: "One thing is to be less decorous, another is to be invalid." Furthermore, the Doctors who favor this thesis, in order to free themselves from the difficulty arising from it, observe that the canons certainly prohibit electing oneself; but, given the favor of one person, and with half of the votes, such a person is not elected by oneself, but by one's colleagues.

[*Latin ed. p. 102*]

102. VELITERNA to his brethren: from which it would appear that he was rather consenting to the election made concerning himself, and thus increasing the number; therefore, he could not be blamed for lacking affection, since the consent of the elected is always required for the election. These very words are written by Layman, Pirhing, Reiffenstuel, and others,

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up to Bouix, loc. cit. The theory thus far outlined appears to be able to be applied most rigorously to the case of the Capitular Vicar. Indeed, since the capitular vicariate is an office entrusted by the Chapter to someone when a seat is vacant, as the Doctors teach extensively, from De Luca, *De canon*, disputation 26, up to Bouix, loc. cit., and it is evident by itself; it does not appear why the laws that apply in other similar appointments should not be applied in the provision of this office, and which are established by the aforementioned Doctors. Nor should you object by saying that the election of the capitular vicar must be made by secret votes. For it could be answered that it is not necessary, according to some Doctors, that the election of the capitular vicar be made by secret votes, as Pitonius holds in *Disputationes Ecclesiae*, 156, vol. S, n. 4 - there - "On the point of law, I have always considered the opinion that the election of the capitular vicar must be completed by secret votes and by scrutiny to be untenable, since the Council of Trent did not prescribe this.... However, secret voting is not required by law, so this is not properly an election to which scrutiny and secrecy are applied; but rather, it is a simple deputation of an Official of the Chapter for a time, and he who is deputed immediately does not require confirmation from a superior. And I said that in such deputations, which are often improperly called Elections, it is not necessarily necessary to observe the form of secrecy or scrutiny, since they do not require confirmation, as is well proven in Passerin, *De electione*, chapter 10, question 8, n. 52, and following. Nor does it follow from this principle, nor from common law, nor from the words of the Council, that the form of voting by secret votes is necessary, but that the natural consent of the Chapters, expressed aloud and publicly, is sufficient, as Rota decisively affirmed, in decision 210, n. 15, vers. 1, and following, part 9, recent, where, however, the election...

[*Latin ed. p. 103*]

VELITERNA, on the 3rd of [month unspecified], concerned not the election of a Vicarius capitularis, but of a Canonico poenitentiario, as mentioned above. Furthermore, I add that not only did the aforementioned Doctors hold this opinion, as stated above, but also the Sacred Order of the Council held this opinion, which judged thus in a certain meeting, in the year 1632, as reported by Garcias in *De Beneficiis Parochiarum*, book 5, chapter 7, paragraph 22. Regarding Lucca, see *Disputationes de Canonibus*, 26. But it could further be observed that the faculty to grant suffrage, according to certain Doctors, can proceed even in the case of a secret scrutiny, provided it is not a solemn one, when indeed, after the publication of the votes, access is granted. Thus, Leurenius explicitly states in *Vicariatus Episcopalium*, Tractate III, Chapter IV, question 551, number 4. Pirhing, in *De Electione*, numbers 217 and 218, states: "Not only in an election which is made through a compromise; but also in other elections, in which the solemn form of scrutiny is not observed, can the elected be ap-

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proved by a majority of the Chapters, or immediately, from the beginning, if the votes of those electing are given openly and to all present, or if a secret scrutiny is requested, after its publication, to give the vote to the other first, and thus to complete and strengthen their election, with the consent of the others." And similar statements are found in Schmalzgrueber, in the same title, number 59, and especially in Bouix, in the aforementioned place, concerning Chapters. It is not relevant that in the Chapter of Veliterna, the election of the Vicarius capitularis must be carried out according to the statutes through secret votes, since Scarfantonio, in *Ad Ceccop.*, book 4, title 6, number 15 and following, observes: "that although the aforementioned elections, and also the resolutions of the Chapters, are rightly prescribed by the laws of the Church to be carried out through secret votes, nothing is different if they are carried out openly, with the common consent of all canons; therefore, they are not made null; Innocent, in chapter 'Si vero', number 2, concerning excommunications, Rota, part 1, diverse decisions, 75, number 62. The reason is because it is not done against common law, chapter 'quia propter de elect...' Indeed, the aforementioned resolutions made openly by the canons are maintained, even though the statute states that they must be made only through secret votes. Many things are prohibited to be done, which, when done, are valid, chapter 'Biduum', 2, question 6. See Daoyz, in the aforementioned place, for the decree."

[*Latin ed. p. 104*]

104. It must be said that this applies when a clause is present that renders the election invalid, and when the statute has been confirmed by the Pope, or when it has been established by common law. Therefore, these points support the opinion of those who maintain that, in the election of the capitular vicar of Veliterna, a place was rightfully granted to the chapter of Cuma by privilege. However, the ultimate argument in this matter, to which the aforementioned Doctors repeatedly refer, and which is also invoked by the canon Di Lazzaro and his associates, is a certain resolution of the Sacred Congregation of Rites, in the year 1649, which is cited by De Luca in his Disputations, 26 on Canon Law, and is joined to the authority of this canonist, who is almost the principal among them. He states in the aforementioned passage: "In the Matheran Chapter, constituted of 32 votes, convened for the election of a vicar in a secret ballot, when in the first ballot no conclusion was reached for the majority, it was decided to proceed to a second ballot, with the prior declaration that it would be permissible for each person to adhere to their own vote; and in this second ballot, Bernardinus Marra, one of the capitulars, was elected, having 17 votes, although his own vote was counted, and for this reason he was immediately recognized as the vicar, and began to exercise his office." Some doubted the validity of this election, namely, whether it was in accordance with the proper form, because, according to the chapter of Cuma in the same title, one's own vote

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could be counted. To this doubt, De Luca responds in the aforementioned passage: "The rigor of the aforementioned form applies when it is a matter of the election of a pastor or prelate to govern a vacant church; otherwise, in the appointment of such officials, or even in the provision or nomination to canonries, and other benefices: for we call this an election; but it is not such as in the individual appointment of a vicar, as in *Garzia De Beneficiis Partic.*, book 5, chapter 7, paragraphs 21, 22, etc." "Furthermore... the aforementioned rule regarding the non-counting of one's own vote applies in the very first ballot, but not when a second act is carried out openly or publicly, through the means of access or adherence..." "I also assign a reason for the difference, because in the first..."

[*Latin ed. p. 105*]

In VELITERNA, during the secret scrutiny, it is unknown whether others will be chosen, and therefore, by giving a vote to himself, one is convinced of ambition or pride, and acts wrongly; otherwise, in the second scrutiny, since hearing or seeing that he is chosen by others, he can consent to them and, with a good heart, without ambition, adhere to their decision. "THE ELECTOR SEEMS NOT TO BE ABLE TO VOTE FOR HIMSELF." On the other hand, the gloss in chapter Cumana expressly teaches that the rule contained in the aforementioned chapter applies solely in the case of a compromise; which is further suggested by the very common reading of the rubric. Indeed, according to the understanding of the gloss, the aforementioned chapter would not have force in every case of a compromise, but only in that particular circumstance when extraordinary power has been granted to the compromisers to add to the count due to the equality of votes. I yield the entire text of the gloss: "There < This chapter is read in various ways, but adhering to the words of the letter, it is summarized as in the rubric, or otherwise according to the intrinsic meaning. If the election takes place according to the form of the compromise, the elected, by consenting to the election made about himself by the majority of those choosing, increases the number and completes the election. And this is a singular case according to this understanding." "From this decree, it is customary to say that the elected person increases the number of those choosing. However, the contrary is true, because the person elected is not counted in the number of those choosing, which is proven in c. 50 of the same title, Cumana church." And in truth, to give a vote to oneself, or, in other words, to choose oneself, indicates a strong ambition, which, if it appeared in secular officials, would be utterly unworthy and reprehensible; but in the ministers of the Church, for whom the words of the Apostles resound: "Neither doth any man take the honour to himself, but he that is called by God, as Aaron was," Hebrews 5:4. Therefore, the rubric of chapter 8 in the scriptural questions 1, taking words from the moral writings of Gregory M., states: "The place of governance is to be denied to those who

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desire it, but offered to those who flee from it." Furthermore, the election of oneself almost seems to be implied within the very concept of election: for it is repugnant that one and the same person should both choose and be chosen.

[*Latin ed. p. 106*]

106. It is possible for a man, in a single and identical act, to assume a different and opposing role, for the choice itself is directed towards another, not towards the one who is choosing. Nor should it be believed that civil or canonical law has diminished the force of those things which appear to be dictated by reason itself. Indeed, civil law, in the *Corpus Juris Civilis*, Book 1, Title 1, seems to exclude the possibility for anyone to vote in their own cause, lest they be a witness or judge in their own cause. Nor is it permissible to say that this is admitted in Book 4, Title 1, as some, such as Gonzalez and other Doctors mentioned above, have stated. For it is established there that he who is elected should be counted among the legally present to form the required number, but it is not asserted in any way that such a person also has the power to vote. A practical example of this distinction is found in the election of the Roman Pontiff, in which Gregory XV, in the bull *Aeterni Patris*, § 2, expressly cautioned that, although the person elected must be counted among the cardinals present, nevertheless, the vote of the elected should not be counted in the two-thirds majority, nor can anyone give a vote to himself. And this was not merely tolerated, but indeed condemned by canonical law, proclaiming in no uncertain terms, in several places, that no one can elect himself. Thus, in the *Decreta* of the Council of Trent, Session VIII, Chapter 1. Furthermore, our work *De iure patronato*, Chapter 3, on patronage, at the end, on justice, etc., adheres to this principle. The Sacred Congregation of the Holy Office, in the document *Juris suffragandi*, May 19, 1877, in which the following question was proposed: "Does a canon who is proposed by the Archbishop to the office of judge and synodal examiner have the right to vote in the capitular elections?" answered: "No," although a contrary custom had long prevailed. (1) Do not object by saying that the prohibition ceases in him who is known to have been called by half of the assembled members, and therefore directs his vote towards himself to form a majority; "because" (1) The related question is found in Volume X, page 273.

[*Latin ed. p. 107*]

VELITERNA. 107. "Tali modo," dicit Reiffenstuel in *De electione*, n. 102, "non eligitur a seipso, sed a sociis suis, quamquam ipse consentiat electioni de se factae, et sic numerum augeat; sive quia, ut loquitur Layman, cit. n. 1, et Pirhing, n. 218 ib., immediate et principaliter, seu directe, seipsum non eligit... et hoc quidem citra notam ambitionis fieri potest, cum consensus electi semper requiratur ad electionem." Primo, respondetur,

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sicut Reiffenstuel ib. n. 103, ad instar principii, quod consensus electi non auget numerum eligentium, arg. cap. Cumana 40, et cap. Quia propter 42 *De electione*. Praeterea, actus collegii numquam intelliguntur conclusi in paritate votorum; sed ut negotium censeatur capitulariter actum et valeat, requiritur consensus saltem maioris partis ipsius, cap. 1, 2 et 3 *De iis quae fiunt etc.*, et hoc est communis apud Barbosam, *Tractatus de canonibus*, cap. 38, n. 3. Unde, in paritate votorum, negotium seu propositio non consideratur approbata, sed potius reiecta. Quae quidem omnia adamussim applicari in materia electionis docent Pignatelli, tom. 1, *Consul*, 23, n. 5; Ursaya, *Disputationes ecclesiasticae*, 8, tom. 2, part. 2, qui rem perstringit concludens: "In iure votorum, aequalitas operatur nullitatem electionis"; et Scarfant, *I. c.*: "ita ut non sufficiat concursus votorum Electorum in sola medietate, cum vota debeant excedere medietatem"; et S. C. C., in *Urbanien. Canonicorum*, 1 Ianuarii 1778, § 4: "cum dici debeat exclusus qui maiorem suffragiorum numerum non habuit, cum ille qui uno etiam calculo vicit, a maiori parte censeri debeat electus, ut est in L. *Quod maior* ff. *Ad municipal.*" Quapropter, qui obtenta medietate suffragiorum convertit in se suum votum, reapse se eligit, determinans in suum favorem maioritatem. Et propemodum ad fucum faciendum dictum videri, quod talis consentiat electioni de se factae; cum electio ante eius votum haudquaquam sit peracta. Ac proinde videretur hunc effugere non posse odium et ambitionis notam, quam incurrit qui seipsum eligit.

[*Latin ed. p. 108*]

408 VELITERNA: Do not therefore conclude that, because of this, the head's disposition, and the arrangement of the Pontiff, become inexplicable. For, if the meaning of the gloss is maintained, everything would proceed plainly, and it would be clearly understood why Innocent III was astonished by the question and doubt of the Bishop of Bayeux. For when the tenor of the agreement, or the will of the electors, has determined that the one called by half of them should truly be elected, provided he consents and accepts, then, by consenting here, he does not properly elect himself, but he sets a condition by which it becomes necessary for him to be accepted by all, in accordance with the previous agreement. And therefore, in such a case, it would almost seem that the Chapter has compromised in one way, and its resolution should be considered. Therefore, in these extreme circumstances, indeed, the scope would be lacking, and there would be no contradiction in electing oneself. Hence, when the restriction retained by the gloss renders the head's disposition equitable and reasonable; and conversely, the extension of the same to any case of election in which equality of votes is found, seems to imply something contrary to common law, contradictory to the very concept of election, and an easy stimulus for ambitions; then, this very restriction of the gloss's meaning becomes commendable, and, according to the general principles of law, it seems entirely to

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be retained. For it is the case that exceptions or privileges against common law always require a strict interpretation – Ferraris v. Privileg.; and it is also the case that if, in the meaning of some law, there are several opinions among the Doctors, the more equitable opinion should be considered, provided the words do not contradict each other, and the reason of the correct expression is preserved, L. Qui filium ff. §. Imperatores, ff. Ad S. C. Trebellian.; with all of these things entirely omitted, this one thing must be noted: those who favor the other opinion extend the disposition of the head, even to all other cases in which equality of votes results. Because, since there is a similarity of fact in these cases, just as there is in the one mentioned, there must also be a similarity of law. However, this argument could be answered first, as Fagnano states in c. Cum ad nostram 29 De elect.

[*Latin ed. p. 109*]

YELITERNA 109, gloss in c. Constitutionum De reg. iur. in VI, and Bartolus in Extrav. Qui sunt rebelles §. Transit n. 7, and Reiffenstuel 1. c., which states that « extension does not occur from case to case, and » already from the identity of reason in those things which exceed the common law ». And this, according to reg. 78 iur. in VI, because < those things which exceed the common law cannot in any way be > drawn to the consequent; and the Pontiff taught in c. Is qui De fil. presbyt. in VI, where he says: « A dispensation of this kind, which exceeds the law, must be restricted as if it were hateful. » Secondly, it may be observed that the argument could be considered fragile from a similar point of view, and, with a single added difference, it can be easily refuted - DD. in cap. Translato de constit., Reiffenstuel especially in the same title, n. 414, from which it does not follow when any difference is found in that point about which we are speaking, can. Nunquam ff. Therefore, having omitted these things for a short time, and even granting that the disposition of the chapter should be extended to every case of compromise, indeed further to every election which is made publicly and by public votes; nevertheless, the matter in question is about an election to be made by secret scrutiny. And that the election of a capitular vicar must be made by secret scrutiny is evident from the individual case in the very capitular constitutions of the Church and from the diocesan synod, part 4, chapter 2, § 19. Indeed, it does not seem that it can be done otherwise. Canonists who defend the other opinion, that is, that the election of a capitular vicar made by public votes is not invalid, seek to prove this from two negative arguments: 1. because the Council of Tridentinum made no provision regarding this; 2. because the capitular vicariate is not a benefice which falls under the prescription of the chapter. However, the question seems to be defined in the contrary sense by the S. C. C., especially in Alexanen. Vicarii capitularis, December 17, 1712. A certain Ottatus, a canon, singer, and doctor, had been elected to this office, and he

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obtained 7 votes against 4; but the votes were given openly and in public.

[*Latin ed. p. 110*]

Concerning the matter of Glaris, because custom for three centuries had signified this. Furthermore, before the Sacred Congregation of Rites, the following question was posed: Whether the election of a capitular vicar, made by the Chapter in the person of the cantor Ottati, should be upheld; the response was: In the negative. From this, the question seemed to be defined as a principle, although Pitonius, in his Disputations, volume 8, number 156, held a contrary opinion. For the canonist Clarus maintained the validity of the election of the canon Ottati, and therefore he cited authorities, which, however, were not considered to have the force of law by the Sacred Congregation. And although he himself, in the edition of the case, referring to a resolution contrary to him at the bottom, did not hesitate to note: "However, with regard to the first point, despite the contrary custom, I cannot recede from what has already been said." Nevertheless, he certainly finds it difficult. Especially if one considers what Ursaya notes further in his Disputations, volume 2, part 2, number 8: "It is indeed accepted in these terms that, in similar elections of a capitular vicar, proceedings should always be conducted by secret votes, as noted by Barbosa in chapter 5 concerning elections. And in our terms, Nicholas, on capitular vicars, number 55: 'There, the election of a capitular vicar must be made by the Chapter and by secret votes, otherwise it is null and void'; and after mature consideration, the Holy Office resolved in the Melevitana, on November 16, 1697, and November 15, 1698, as can be seen in book 47 of Decretals, page 529, and in book 48, page 522; and this resolution, as it individually determines our question, must be considered as a case of law." Furthermore, having consulted the books of decrees of the Sacred Congregation of Rites in the Melevitana, dated November 23, 1697, where disputes and contentions often arose in the resolutions of the Chapter made by public votes, I found that the Sacred Congregation "considered it expedient that *these capitular resolutions be made by secret votes." Therefore, but given that the election of a capitular vicar must be made by secret votes, it easily follows. Indeed, those very Reverend Fathers who otherwise hold that the one called to the office of vicar, with half the votes, can turn their vote to themselves, and thus *form a majority; this they teach in the hypothesis that the election is made openly and publicly, or...

[*Latin ed. p. 111*]

VELITERNA 111, which after the scrutiny, provides for access. For all completely condemn the elector who dared to write his name on the secret ballot, and declare that he is not to be considered, as Reiffenstuel teaches in title De elect. § IV and § XII, and as the Rota decided before Clement XIII on June 22, 1733, in case 114. However, firstly, that the election of the

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Vicar can be done openly and publicly, is false according to what has been said; and secondly, that indeed, in it, access is provided, also appears to be false. And in truth, access, of which the law speaks, especially when it concerns the provision of the Apostolic See, as I have pointed out above, is a completely special method of election, following a secret scrutiny; but it is entirely and essentially distinguished from the scrutiny, especially because in the scrutiny, votes are given secretly, while in the public access, it seems to be of the essence of this election, that votes are given secretly and individually in the very scrutiny. Therefore, it seems commendable the opinion of some other Doctors who hold that in the election of a capitular Vicar, access should never be given to privilege. With Pignatelli, above all, who in Consul. 23 n. 9, vol. I, reasons about the matter in this way: "And less, the election of a capitular Vicar, of which we are speaking in this discussion, is maintained because the elected one, from among the vocal members, will be able to consent to his own election, so that his vote is counted towards establishing the majority of votes. Because where the election proceeds by secret suffrage, he will not be able to elect himself, nor to count his vote in the number, according to the distinction of Hostiensis in cap. Per Vestras n. 5 de iurep., which there is followed by Io. Andreas n. 4, Anchar, n. 3, Butr. n. 3. - The Matheranensis, however, cited by De Luca, may perhaps not be able to present a difficulty, since there, a compromise had intervened regarding a vote being attributed to him, in the manner of the species in cap. Cum in iure, according to the understanding of the gloss.

To these, some brief observations have been added which seem to touch upon the practical question. Canon Di Lazzaro, according to his own testimony, had given a vote, in the scrutiny, in favor of the Canon Vita: after the public voting, he himself withdrew his vote.

[*Latin ed. p. 112*]

112. In Veliterna, [the matter] having been brought up, and turning it back upon himself, he stated that, "in uno eodemque actu electionis, duplex suffragium habuisset," that is, that he had given a double vote in the same act of election, which was not permitted to him, as Ursaya noted in a similar case. *S. Tom. 2, part. 2, cit.* Indeed, it is permissible to offer one's vote in the election of a Vicar; however, in this matter, variation is not permitted to one alone, but all must observe the established rules. Furthermore, Di Lazzaro affirms that he gave his vote to the canonical [candidate], yet this is not proven, nor can it be proven, since the ballots were immediately burned after the reading. Therefore, whatever may be the case regarding the general principle, and although the possibility of voting for oneself might be considered permissible in general, in practice, the election of the canonical Di Lazzaro would always seem to be questionable, because it is unknown whether he truly gave his vote for the canonical [candidate], or rather, for himself. Even more so, in the aforementioned case in Veliterna

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of the year 1881, concerning the election of the Secretary, Di Lazzaro is said to have been given a vote in a secret ballot. Finally, even admitting that there was no hope of a better outcome from the repeated scrutiny, it could certainly be recalled that if a vote is ever turned back upon oneself, it is permitted in order to end discord and to provide for benefits more quickly; however, this remedy, which is abnormal and odious, should not be available in those cases in which the law itself provides that, if it cannot be provided for by the action of the Chapter, it should be provided for quickly by another means. Moreover, this would seem to be the case specifically with the capitular Vicar, for if he is not named by the Chapter during the eight days, his nomination remains with the Metropolitan, or with the nearest Bishop, or even with the Apostolic See, according to various legal norms. Considering these and other matters, the intention was to examine whether the election of a capitular Vicar and other capitular offices, carried out by secret ballots, is valid, in which, due to the equality of votes favoring two [candidates], one of them is chosen as having the majority.

[*Latin ed. p. 113*]

In the matter of determining whether a vote cast for oneself should be considered valid, and in order to clearly demonstrate the position that should be adopted, the following resolution was reached:

RESOLUTION. The Sacred Ordinary Council, after deliberation on April 18, 1885, decided to respond: Negatively.

The reasons for this decision are as follows:

I. The very nature of an election seeks to determine which candidate will obtain the majority of votes; for a person to act in a manner that is both different and opposed within the same act would be contradictory.

II. To cast a vote for oneself is to display the utmost ambition, which is to be avoided by those who serve the Church. As Gregory M. stated, those who desire to hold a position of authority should have it denied to them, while those who shun such positions should be offered them.

III. According to the law, there is no valid election in the event of an equal number of votes; therefore, if a person obtains half of the votes and then casts a vote for themselves, they are effectively choosing themselves, thereby creating a majority and failing to avoid the appearance of ambition.

IV. The "Disposition of the Chapter" (Capitis Cum) should be restricted to the specific case in which the Chapter appears to have compromised on a single candidate who was called upon by half of the electors and elected, provided that they consent; however, this consent does not increase the votes, but rather sets a condition that they must be accepted by all.

V. This restriction, applied only to the unique case of an election within the Chapter, makes the "Disposition of the Chapter" reasonable in law; however, extending it to any case in which an equal number of votes is

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verified appears to violate the common law, offend the nature of an election, and encourage ambition.

VI. The extension of this principle from one case to another is something that cannot be permitted, even if there is a perceived reason for it, as stated in Canon 79 of the Sixth Council of Trent: "That which exceeds the common law cannot be extended to any consequence."

VII. Although the election of a Chapter Vicar may not appear to fall under the prescription of the "Disposition of the Chapter," because it is not a benefice, and the Council of Trent makes no provision for it, nevertheless, according to Canons 3 and 8 of the Decree "Decretum de Electione," from Volume XVIII, Section II, Chapter VII, paragraph 8.

[*Latin ed. p. 114*]

114 VELITERNA. According to the jurisprudence of the Sacred Congregation of the Council, it seems certain that this election must be carried out through secret ballots. VIII. An election of a capitular vicar and other capitular offices, completed by secret votes, is rendered invalid when, due to an equality of votes favoring two candidates, one of them, in order to secure a majority for himself, declares that he transfers the vote given to him by the other to himself (1).

CALTAGIRONE. CONCERNING THE CARE OF SOULS. January 24th and March 7th, 1885. Session 24, chapter 18, concerning reforms. SUMMARY OF THE CASE. In the town of Mineo, in the Dioecesis Calatayeronensis, there exist three parish churches, namely, St. Mary Major, St. Peter, and St. Agrippinae, to each of which a clergy is attached from ancient times. Whether this clergy should be considered a collegiate body, or rather a true and canonical Chapter, so that the aforementioned churches should be called Communions or Collegiate churches, is a matter of debate. Furthermore, whether the care of souls is actually and formally held by each of the colleges is also debated. However, in this dispute, it seems certain that, for many years, the practice has been that the care of souls is demanded by the Bishop from only one of the colleges, with the title of Vicar Curate or similar, while all the others are forbidden to administer the Sacraments without the consent of this one. (1) A doubt concerning the election of the capitular vicar, regarding the act of adding a vote to oneself, in order to increase the number of votes for the purpose of establishing a majority, had been raised, but remained unresolved; Vol. XIII, page 390. Today, however, the Sacred Congregation of the Council, under the authority of the Cardinal and the esteemed De Luca, the prince of jurists, having thoroughly resolved the matter, we have come to the conclusion that the elected vicar of the chapter may add a vote to himself, and we subscribe to this opinion, which changes and invalidates the election concerning the other capitular

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offices. And with a willing mind, we...

[*Latin ed. p. 115*]

CALATAYERONEN. i 15. As matters proceeded peacefully, at the beginning of the year 1882, the royal treasury, considering the churches of S. Mariae Maioris and S. Agrippinae to be vacant, seized possession of all their assets. Those who were most grieved by this usurpation, and who were involved in the affairs of these churches, even in civil matters, namely, Agrippinus Pitari, the treasurer of S. Mariae Maioris, Stephanus Salerno, the treasurer of S. Agrippinae, and Marius Simili, petitioned the Bishop for counsel and assistance in this matter, so that at least the parish stipends might be secured from the treasury's grasp. After considering all matters, it seemed that there was no hope of recovering even the parish stipends, unless each parish were assigned a title. In order that the other members of the clergy of these churches might bear this with a more even spirit, the Bishop arranged for bulls to be issued to those who were to serve as treasurers. After obtaining the Apostolic Bulls, and with the approval of the royal authorities, the aforementioned treasurers were admitted to the possession of the parishes, and at Le Conquet, the clergy of the three parochial churches of the locality of Mineo petitioned the Sacred Congregation, declaring that the alleged usurpations and seizures were contrary to Apostolic Letters, since the aforementioned churches were in fact properly called Collegiate churches, and that the care of souls resided in each college in both theory and practice. The Bishop, on the other hand, sent a very careful letter, in which he sought to defend his course of action, and at the same time to demonstrate that the complaints of the clergy were without foundation. Furthermore, the priests Pitari and Salerno maintained their position, and as arguments and facts were presented from both sides, which could be more readily understood there, the following decree was issued on February 18, 1883: "Those who appeal shall exercise their right before the archiepiscopal court regarding the asserted habitual and actual care of souls by the college, to the extent and as it is legally due; and provision will be made thereafter." In accordance with this rescript, the priests Pitari and Salerno, who had been summoned to appear before the metropolitan court of Syracuse, responded promptly to the summons. The metropolitan court then addressed the matter of habitual and actual care of souls.

[*Latin ed. p. 116*]

116. CALATAYERONEN, with singular diligence, issued this decree on March 4, 1884: "The habitual and actual jurisdiction over the three collegiate parochial churches of St. Agrippinae, St. Mary Major, and St. Peter in the city of Maenarum belongs to the Chapters of Canons of those same churches." This decree, however, having not been notified to the priests of Pitari and Salerno, who were thereby harmed, these individuals on March

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26, 1884, brought an appeal before the metropolitan court, and on April 1 of the same year, the matter was presented before the Sacred Congregation for the Council.

DISCUSSION: Regarding the PAROCHIAL RIGHTS. The patron of the parishes primarily contended that the canons of the churches of St. Agrippinae, St. Mary Major, and St. Peter never possessed a proper parochial right, but rather, they exercised the care of souls only in a collective manner, and that as vicars, curates, removable officials, delegated by the true parish priest, or by the Bishop. He deduced this from the fact that the town of Maenarum (Mineo), whether before or after the Council of Trent, always constituted a single parish divided into three parts, whose titular parish priest was the Dean of the Syracusan Cathedral, since at that time Mineo belonged to the Diocese of Syracuse; and since the Dean could not reside there, he delegated the care of souls to the priests of the three churches. Rocco Pirro, a celebrated historian of Sicily, recounts in his *Notitiae Sicularum Ecclesiarium*, vol. i, *Siciliae Ecclesiæ Episcopi*, that in the year 1388, Thomas d'Herbes, the Bishop of Syracuse, convened a synod, and among other things, attached the parish of Maenarum to the Deanery of Syracuse; so that the Dean was simultaneously the parish priest of that city. Furthermore, it is customary for the Dean to delegate the exercise of the care of souls, or the administration of the sacraments, to the priests of the three churches of St. Agrippinae, St. Mary Major, and St. Peter, and for them to function as sacramental chaplains, acting in place of the Dean. This state of affairs also existed during the time of Trent, and...

[*Latin ed. p. 117*]

CALATAYERONEN. 1.1 After Trent, striving to maintain his influence, the patron sought to prevail through various means. He recounts, for instance, the establishment of a community or chapter in the church of St. Agrippina. When the Bishop of Syracuse decreed this in 1556, not only did he consult the Dean of Syracuse, but he also obtained his consent on December 10, 1556. The Bishop also speaks of this obtained consent in the decree of the establishment of the College, dated December 14 of the same year, in which it was stipulated that the canonical chaplains should reserve the first stall in the choir and the first place in processions for the Dean of Syracuse. After Trent, the patron continues, the Bishop of Syracuse, in order to fulfill the laws of the Council, desired that the Dean establish a perpetual curate for the parish of the City of Moenarum, which he himself confirmed with his authority. Since the Dean is obligated to reside in Syracuse, he stated, "we have appointed a perpetual curate for those churches, that is, for the three churches of the city of Moenarum, namely, D. Pompeus Blondini, who will choose chaplains for the administration of the sacraments in those churches." This is also found in the decree of the official visitation, dated October 13, 1614. Furthermore, in 1619, in another official

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visitation, the general vicar of the Bishop, having chosen three perpetual vicars at his own discretion, that is, one for each church, quickly, at the insistence of the Dean of the Cathedral, revoked those three vicars chosen by him and ratified the previously made appointment of a single perpetual vicar. However, since the clergy of the three churches were displeased with the appointment of these vicars, a meeting was held on October 20, 1625, with the Dean of Syracuse, in the presence and with the consent of the Bishop, with the aim of ensuring that no further perpetual vicars would be appointed, and that the care of souls would be left solely to the sacramental chaplains, who would therefore be "as they were formerly, like temporary vicars in the aforementioned office, namely, the Dean's office, unless they are removed by the Most Reverend Bishop, by whom others can be created in their place." The appointment of...

[*Latin ed. p. 118*]

118. Concerning the chaplains, it had been stipulated that they "should be, and ought to be considered, chosen by the Illustrious and Reverend Bishop and his successors perpetually, with the exception of the Dean, who shall perpetually receive forty-eight annual stipends." Furthermore, when the Bishop, in the year 1654, elevated the Church of Saint Mary Major into a collegiate church, this was also done with the consent of the Reverend Nicholas Corso, Dean of the Cathedral Church of Syracuse, and with the stipulation that no harm should be done to the Dean of the Cathedral. At the same time, the canons requested that they be allowed to have a priest for the church who, bearing the title of "Major Sacristan," after being examined and approved by the Bishop, could administer the sacraments in the said church and parish, so that the aforementioned canons might not be hindered or prevented. However, it happened that the patron observed that, gradually and without apparent reason, the canons, under the pretext of a legitimate impediment, were transferring all exercise of the care of souls to the Major Sacristan, and that, with the passage of time, they were asserting that such care was held by them, while in reality it was exercised by the Sacristan, indeed, both in act and in intention. The same thing occurred when the church of Saint Peter was elevated to a collegiate church in the year 1670, as had previously been done for the churches of Saint Mary Major and Saint Agrippinae. For here too, the same parochial rights were reserved to the Dean of Syracuse, and recognized as such, to the exclusion of all others, as can be seen from article 9 of the statutes of this church. Moreover, the patron, after briefly mentioning the matter of the erection of collegiate churches, which could be challenged as illegitimate, and concerning which more will be said later, concludes that, from what has already been said, it follows that 1) the parish priest of Minai had been the Dean of Syracuse since the year 1388; 2) the priests of the three churches had been coadjutors or sacramental chaplains; 3) and that this

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had continued even after the Council of Trent; although then, by agreement between the Bishop and the Dean, the aforementioned priests, or canons, of the three churches were granted the faculty of delegating the duties to the Sacristan. Finally, the patron noted that all of these things were ultimately confirmed by the controversy that arose in the year 1698 concerning...

[*Latin ed. p. 119*]

CALATAYERONEN. 119 uncias debebat Decanus Siracusanus, secundum quod supra dictum est; ita quod Episcopus, per sententiam provisionale, in decursu anni V visitationis, constituit contra Canonicos solutionem detractantes, et favore Decani qui eam postulabat, sententia quae partibus communicata fuit anno 1701. Post haec, patronus ad alterum caput defensionis transiens, asserit quod ab anno 1701 usque ad praesens nulla "mutatio facta fuit quoad ius parochiale in civitate Minae, favore collegiatarum. Etenim, ut ipse dicit, praeterquam quod Canonicorum nullum monumentum afferre valent, quo probent sibi, praevia canonica concursus *forma*, fuisse iure proprio concessam curam animarum; in facto est quod usque ad praesens tres oeconomi curati, unus pro unaquaque ecclesia, absque interruptione ab Episcopis constituti sunt, Canonicorum autem numquam parochos fuisse, neque iurisdictionem ordinariam habuisse, vel ex eo patet quod toties quoties opus fuit, eis ab Episcopis delegata est facultas audiendi confessiones, non omnibus, nec pro omnibus; aliis pro utroque sexu, aliis pro viris tantum, aliis pro infirmis et pro omnibus etiam ad tempus, aliquando ad annum, aliquando ad sex menses, addita semper clausula « *interim* ad nostrum arbitrium et beneplacitum ». Ad hanc assertionem comprobandam, recitat patronus longam seriem factorum ex tabulario Curiae episcopalis depromptam, quae nobis exhibet elenchum omnium Canonicorum qui ab anno 1682 ad annum 1883, antiquiores libri desunt, iurisdictionem ad confessiones audiendas modo supradicto ab Ordinariis receperunt. Hoc autem indicium, patronus appellat, argumentum invictissimum, ad e vincendum quod Canonicorum Minaei iure parochiali proprio carent; habentibus enim tale ius, sacramentalis, et in specie poenitentiaria iurisdictio, non delegatur. Ad obiectionem verum quae opponi posset, nimirum die 16 Februarii 1788, ex decreto Vice-regis Siciliae, prohibitum fuisse quod cura animarum collectivo modo et per hebdomadas gereretur, et praeceptum ut exinde Vicarius ab unoquoque Col-

[*Latin ed. p. 120*]

120 CALATAYERONEN. A legion was chosen, to which the parents belonged; the Canons, transferring to the Vicariate, exercised the simple ministry of caring for souls. The patron responded: all these actions were by order of the secular authority; and that the Canons, for the first time in this instance, had called themselves true parish priests, but abusively, according to what has been said above; and therefore, they could not have

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delegated anything more to their chosen representatives, except what they themselves possessed, namely, the vicariate power, with which the weekly Canon had availed himself for so many centuries, as is read in the very decree. Finally, the King's Lieutenant revoked the law the following year; but the municipal council petitioned that it be restored in the year 1806; and this, in fact, was obtained after royal consent, by decree of the Ordinary. Therefore, if it is verified during these times that mention is made, either in decrees or in letters, of habitual care belonging to the resident colleges, and of actual care granted to the Vicars; this is easily explained, namely, that it happened abusively, or by error, or according to the custom of dealing with the secular authority. The Vicars, although called perpetual, were chosen for each church, but could not be true parish priests, but only temporary coadjutors; and the Dean of Syracuse himself still remained. For the Ordinary cannot choose perpetual Vicars in parochial churches, unless with the consent of the Holy See, according to the Constitution *ad exequendum* of St. Pius V. Regarding another custom, equally unusual during these times, namely, that new Canons, in order to obtain possession, would put on the stole, and would be led to the altar of the Holy Sacrament and to the baptismal font, the patron affirmed that this was due to a similar cause; and, with the testimony of the Pro-Vicar of the Bishop in the city of Mineo, who examined the records of the churches for this purpose, it was shown that this practice did not date back before the year 1795. Finally, the patron addresses the third point of contention, and denies that the Apostolic Letters of May 20, 1882, can be called fraudulent or surreptitious, and therefore, there is no reason to open the matter. And indeed, he judges that two of the points could derive from fraud or surreptition; from 1) that the right of...

[*Latin ed. p. 121*]

CALTAGIRONE. 121. It is properly called "rochiale" because, from ancient times, it belonged to the priests of those three churches; 2) because those churches were raised to true and proper collegiate status, with the care of souls belonging to the Chapters. However, what was asserted previously appears to be plainly false from what has been said: that if, at the end of the eighteenth century and thereafter, the canons asserted their own and parochial care of souls, this was done abusively; for it is never established whether the Deanery of Syracuse was, by its own right, *privatum*; nor whether the colleges of canons were given, by their own right, the power to exercise the care of souls. Therefore, since in the erection of the Dioecesis calatayeronensis, the union with the Deanery of Syracuse was, in fact, dissolved, and yet a true parish priest, according to the standards of Trent, never appears, it must be said that the Bishops tolerated the precarious state of the three Vicars who governed those churches in place of all the priests, and who, otherwise, had only a purely titular position. This,

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however, was not rejected by the Bishop, and therefore, from this point, no deception or trickery can be inferred. Regarding the second point, the author observed that the parochial right could not be united with each individual chapter, since it was already found to be united to the Deanery of Syracuse. This becomes more evident from the fact that those Collegiate churches are only called such improperly. Indeed, they were established not by an Apostolic privilege, but by the ordinary authority of the Bishop. In the three decrees of erection, it is read: "by our ordinary authority." Hence, these churches are Collegiate only in name, since the Bishop cannot raise simple churches to the status of Collegiate churches; Scarfantonius, *De Canon. Praec.*, I, 15, title 4, n. 83; Ferraris, *V.*, *Collegium*, n. 18-21; De Luca, *De Proem.*, discourse 51, n. 4; Barbosa, *Iur. Eccl. univ.*, L. 2, c. 6, n. 1; to which are added the Resolutions of the Sacred Congregation of the Holy Office and the Sacred Roman Consistory in Tropea, July 22, 1588, and in Messina, 1502, and others which are found in the Acts of the Holy See, Volume 2, p. 556; also, the Sacred Rota, on February 18, 1636, etc. Finally, Lucidi, in *De Visit. ss. Limin.*, c. 7, art. 2, n. 83, Volume i, notes: "The Sacred Congregation has resolved all disputes."

[*Latin ed. p. 122*]

122 CALATAYERONEN. By the decree of its Council in the year 1622, it was firmly established that Churches which, up to that time, had been adorned with the title of "collegiate" by the authority of Bishops, should be recognized and considered as truly collegiate. However, in the future, if any Church is elevated [to the status of collegiate] only by the authority of the Bishop, and without the intervention of any Apostolic power, it shall not, in any way, be considered as such, for such a Church ought not to be considered a collegiate one. Therefore, the patron noted that the matter of the collegiate status of the churches of *S. Mariae Maioris* and *S. Petri* was already settled by law, since their erection occurred in the year 1623; and the controversy was limited solely to the church of *S. Agrippinae*. However, with regard to this latter church, which was established as a collegiate church in the year 1556, it can be observed that the intention of the Bishop was to establish a community [of canons] within it, and not properly and precisely a chapter. Indeed, according to *S. Rota Decis. 234, n. 546*, and *Decis. 151, n. 11*, "a collegiate church differs from a church with a community in that in a church with a community, there cannot be any dignities, and therefore there cannot be a fourth canonry reserved perpetually for the Holy See in cathedrals and collegiate churches; but in a collegiate church, there must be at least one dignity." Finally, the execution of Apostolic Letters is never carried out by the Supreme Pontiff for a church with a community, as is customary for canonical collegiate churches. To these two differences, a third must be added, namely that the canons of a collegiate church cannot be deprived of their benefice except

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for a crime and by the sentence of a judge, or by their own renunciation. But in the matter of dignities, it does not appear that they were established from the beginning for the church of *S. Agrippinae*, as the patron states: only in the year 1672 did Bishop Capoblanco, by his own authority, create four dignities and fourteen canons, whereas previously the church is said to have been without number [of canons], and he intended to have them there; but all the dignities and canonries existed freely for the collation of the Ordinary. And if, over time, it happens in this church, as well as in the other two, that the Supreme Pontiff confers the first dignity, that fact has occurred.

[*Latin ed. p. 123*]

CALTAGIRONE. 123. Either because it was vacant during reserved months, or due to a prior renunciation made before A. Datario, or because in another way that dignity remained affected for that term. It must be noted, however, that provisions made by the Supreme Pontiff do not alter the nature of benefices, unless the Pontiff openly intends to change them. Similarly, in the clergy of the church of St. Agrippinae, one of the qualities is lacking, namely the mark of collegiality. It has never been found that these canons have requested the execution of Apostolic letters, as the patron affirmed. But a third quality is also absent, namely the immovability of the canons: for they can be removed at the pleasure of the Bishop if they cease "for four months from the aforementioned parochial service and divine praises," as the Constitutions state. Therefore, the patron concludes, it cannot be said that the churches in question are truly collegiate, and consequently, the assertion to the contrary, namely the parochial right of the college, necessarily falls. However, the Bishop of Caltagirone cannot be accused of subreption or prevarication, and it seems entirely necessary to refute the judgment of the Metropolitan Curia. The patron, however, presented nothing regarding the canons. With these considerations, and with the favor of the parish priests, the proposed doubts were to be clarified. I. Whether the judgment of the archiepiscopal court should be confirmed or refuted in this case. II. Whether the intention of the parties should be taken into account, so that it may be determined whether the Apostolic letters were obtained by subreption or prevarication in this case. RESOLUTION. After having considered the matter, the Sacred Congregation responded on January 24, 1885: It is postponed to the next [session], and with absolute and infallible certainty, the execution of the Apostolic letters regarding the two parishes is maintained in the meantime, and regarding the third, that of St. Peter, also. However, it is understood that, as far as necessary, the Bishop should provide [for the situation] in

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the meantime.

[*Latin ed. p. 124*]

424 CALATAYERONEN. Again, a question was proposed, with the complete text of the judgment of the Syracusan Congregation presented, and with the same doubts previously mentioned. Regarding these matters, the Sacred Congregation, on March 7, 1885, decided to respond as follows: Regarding I. The judgment is to be overturned: and the Ordinary should proceed to the canonical erection of the three parishes, while maintaining the provision already made for the churches of St. Agrippinae and St. Mary the Greater; and he should also canonically provide for the collation of the parish of St. Peter, and further. FROM WHICH THE FOLLOWING ARE DEDUCED: I. Arguments of considerable importance have demonstrated that habitual and actual care were not present among the clergy of the three churches; for the actual care was exercised in the name of the Dean, while the habitual care remained with him until the present erection of the parishes, which was imposed upon the Ordinary by the Apostolic See. II. Churches cannot be elevated to the status of a collegiate church solely by the authority of the Bishop; and unless the authority of the Pontiff intervenes, it is not valid. PISCIEN. DEANERY. May 16, 1885. Session 24, chapter 12, concerning Reform. SUMMARY OF THE CASE: The chapter of the cathedral church of Pescia was endowed with six prebends; when, in 1876, the Dean, who held the fifth place among these dignities, died. Immediately after the death of the Dean, the prebend was appropriated by the treasury, since it was outside the canonical number of twelve prebends established by the Italian government, and therefore only the title of the fifth dignity remained. However, the Bishop expressed his desire to maintain that title and dignity, not in order to grant it to an outsider, but to one of the existing canons, for the sake of service; so that it could be considered as a reward for his more faithful and longer service. With this desire,

[*Latin ed. p. 125*]

PISCIEN. 125. The Bishop arrived at the Chapter meeting, deciding that, in the future, the canon who, by possession, was the most senior, should succeed to the title of Dean, without prejudice to the precedence of any Dignities previously held. In accordance with this, the canon Fredianelli, who was announced as Dean, was the canon who held the first stall in the choir, and who was, by title of possession, the most senior among the canons. However, upon his death, when the matter of appointing a successor arose, various questions arose, since the canon who was closest to the Dean's stall was a canon honorarius; to whom neither the duty of serving in the choir is assigned, nor does he have a vote in the Chapter. A Synopsis of the Discussion. Furthermore, when a suppression has been carried out in a case by civil authority, with the Church protesting as much as she can,

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it is clear that such a suppression should have no validity, and therefore the dignity of Dean should remain in the same state as before, even though it may have been granted through violent usurpation, and should no longer be considered as such. For, as the law states in L. 4 §. Fundamentum, de re iudic, and cap. Illud S de iurepatr., that which is null is incapable of producing any effect. Therefore, just as the existence of the aforementioned dignity cannot be called into doubt, so too the same dignity can still be conferred. This is confirmed by practice, whereby, especially in the region of Italica, dignities or canonries that have been suppressed by the government are sometimes conferred again. Moreover, it is well known that it is within the power of the Bishop, with the consent of the Chapter, to restore a suppressed dignity, as Barbosa clearly states in De dignitatibus, in genere C. 21, where he cites several other Doctors. And once this has been done, nothing seems to prevent the aforementioned dignity from being conferred according to the Bishop's will, namely, to the most senior canon in the service of the choir, with the proviso that the precedence of the stall be taken into account. For, in the first place, this would seem to be entirely in accordance with common law, and indeed, it is more fitting, since IT IS ACCORDING TO THE VOTE OF THE BISHOP.

[*Latin ed. p. 126*]

126. It is fitting that he who has labored more and with greater diligence should receive greater remuneration. Furthermore, no law concerning the foundation [of the benefice] is established which is contrary to the vote of the Bishop. If, nevertheless, such a law were to be proposed, it would seem impossible to enforce it, since it has been established that the endowment of the benefice constitutes, as it were, the foundation of the will of the founder; and therefore, according to the common rule of law, it should follow the vicissitudes of that endowment: "The accessory follows the nature of the principal." And indeed, Felinus in Chapter 12, section 1, concerning Constitutions; Reiffenstuel in *De Praeb, et Dignitat.*, number 114; Azorius, page 2, book 6, chapter 24, question 6; and others, in the final section of *Instit. de Usu fr.*, chapters 5 and 12 concerning Constitutions, state that the endowment of a benefice ceases with the cessation of revenues. Therefore, perhaps this one point remains to be investigated, namely, whether this is indeed the case, which is now the opinion of the Bishop. Furthermore, what was the intention of the same Prelate, which the Chapter professed to follow at the beginning of its deliberations, is already evident from the nature of the facts, and becomes even more clear as soon as the aforementioned questions arise. Then, if the Bishop, having been consulted by some on this matter, expressly declares what he understands, so too it appears that the Chapter has the same intention, stating: that in the future, the older canon, by reason of possession, shall obtain the title of Dean. These words, in the sense of the Bishop, which has already been made known beforehand,

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seem to have been uttered. Moreover, this interpretation appears to be perfectly consistent with common law, since, under that name, the older canon is the one who was received into the chapter first. And this is certainly true, as in the case of any remuneration to be given, because honors and privileges are due for services rendered; *De Luca de Canonicis*, discourse 5, Barbosa, chapter 30, number 9, concerning canons. And this is further confirmed if the words of the Chapter's deliberation are taken together, as is proper. Indeed, if any difficulty could have arisen, it would certainly be more certain whether the word "older" refers to seniority in the stall, that is, to precedence...

[*Latin ed. p. 127*]

LUCCA. 4º, 27º. Concerning the interpretation of "cedentiae," or the transfer of rights, whether it implies a void in the service, i.e., a temporal matter. However, if explanatory terms are used concerning possession, it might be said that the words of the capitular deliberation should be understood according to the Bishop's judgment.

THINGS OPPOSED TO THE BISHOP'S VOTE. But, on the other hand, it could be observed against the deliberation of the Bishop and the chapter, and the restoration of dignity granted by them, that it clearly implies either a union of both titles, namely, the Deanery with the Canonry, or the extinction of one title in favor of the other. But whether this or that, since the matter is repugnant to law, it cannot be done unless the causes are present which the same law requires. Furthermore, the very condition of the Deanery would be worsened. Indeed, this dignity, which was the fifth, would become the sixth, and then a law would be enacted that would not allow it to be conferred upon anyone except a small group of canons. Such an innovation seems to be beyond the power of the Bishop and the Chapter. But, even if it were the case that there is an opportunity to confer the Deanery in favor of a certain Canon, he should certainly be chosen according to the deliberation that the Chapter, with the consent of the Bishop, issued. Indeed, the aforementioned older word, as is clear from the report of the President of the Chapter, and which the Chapter retained in the aforementioned deliberation, may indeed signify the precedence of antiquity, but not of time, or rather, legal antiquity, and not natural antiquity, as Cardinal De Luca states in *De Canonicis*, book 11. For the word "antiquior" seems to be understood only as referring to the antiquity of service, when it is a question of some personal grace granted by the superior: in which case, since the person is primarily considered, the disposition of the law does not enter into it. But perhaps it should be said differently in the present case, where it is a question of a decree that does not specifically concern any person, or rather, the canonry itself; De Luca, *loc. cit.* This argument gains greater strength if one considers that in the very doubt as to whether the grace is personal or real, it should rather be said to belong to the thing

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itself, as De Luca teaches in book 13, *De Iure Patr.*, discourse 3.

[*Latin ed. p. 128*]

128. QUESTION. Furthermore, since the interpretation of the law must proceed in such a way as to prejudice others as little as possible, especially those who have a right involved, as the Doctors unanimously teach; and since, in a dispute concerning some privilege or grace, he who is to be preferred should be determined according to De Luca, *de alien*, section 24, number 1, who discusses avoiding damage or not losing a right; it is perhaps doubtful whether he should be appointed to the Deanery who enjoys precedence of stall, or legal seniority. Otherwise, this person would lose the right to precedence, and would suffer damage from the loss of that same precedence. Nor would the addition "by possession, as if it contained a completely clear explanation" be helpful. For whether it is said "older" or "older by possession," the matter seems to be reduced to the same thing, and the same doubt persists, namely, whether these words are to be understood of the precedence of time, or, better, of legal or natural seniority. Having explained these things, the purpose was to clarify the question: In the case of a known vacancy in the Sacred Canons, under the date of May 16, 1885, was it decided to respond: "In favor of the titular canon who is older, by reason of service."

FROM WHICH WE GATHER:

I. By common right, under the name of "older in the choir," it is understood the titular canon, not the honorary canon who has served longer; or the one who was appointed among the titular canons before others.

II. Since honors and privileges are due to those who have performed duties and services, it is more fitting that he who has served the Church longer and more faithfully should receive the reward before other canons, setting aside the seniority of precedence in the stall, or legal seniority.

RESOLUTION.

[*Latin ed. p. 129*]

PISGIEN. 129 III. It is the opinion of some that, at that time, both the Bishop and the Chapter were mistaken in their judgment, based on the words they used, namely, that the older one, by reason of possession, should be preferred when deciding who should receive the title of Dean, as a form of compensation. ILLERDEN. OF CANONICAL RIGHTS. May 1st, 1885. Session 24, chapter 12, concerning Reforms. SUMMARY OF THE CASE. In recent years, a dispute has arisen between the Canons and the Beneficiates of the Cathedral Church of Illerida, with the Canons asserting that the group of Beneficiates is obligated to accompany the Blessed Sacrament when it is brought to sick Canons, and to accompany the

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bodies of the same Canons; while the Beneficiates deny this. SYNOPTIC ACCOUNT. The Chapter has chosen a patron, who, in his defense, has sought to define the state of the controversy, noting that in every collegiate church, and especially in a cathedral church, the sacred functions must be performed by those who are devoted to that church, and not by outsiders. Therefore, the Beneficiates should be called "assistants" as those who are constantly present; the Glossa explains "assisios" in chapter XVI concerning non-resident clerics. Furthermore, processions for the Blessed Sacrament, and the funerals of Canons and Beneficiates, are of that kind of function which is reserved to the Chapter and the clergy of the collegiate and cathedral church, although the canonical portion should be left to the parish priest, of the deceased Canon or Beneficiate, in his own parish. However, this is clearly the practice in the Diocese of Illerida, and is not disputed; indeed, it is also in conformity with the practice in several cathedrals in France and Spain, as can be seen from Divionen, July 8th, 1865, in DEFENSÃO CANONICORUM. Acts, Volume XVIII, part O, chapter VII, 9.

[*Latin ed. p. 130*]

130. IL-LEHtì&EN. The Sacred Congregation discussed the matter; and it is most consonant with common law, according to Menoch. Canon law, number 963; the Rota's decision, 242, in Barchinonen, before Rezzonico. Finally, when it is said that beneficiaries are obligated to provide for Viaticum and the funerals of canons, it must be understood of the group, and not of individuals, who, with a legitimate reason, can certainly be excused. Having stated these things, the defender, in order to prove his thesis, first brings forward Article VI of Title V of the constitutions of the Church of Illerdensis, of the year 1853, in which it is stipulated that beneficiaries must, besides other common duties, participate in processions and other offices, functions, and extraordinary acts, with complete obedience in all that the president of the Chapter commands. Furthermore, extraordinary functions are called those that are performed outside of the fixed days, such as the chanting of the Te Deum, triduums of supplication, or even funerals and processions, celebrated for an unforeseen reason, as happens on the occasion of the Holy Viaticum. The statutes of the Church are confirmed by a provisional decree, commonly called the "Regolamento interinale," published in the year 1868, after a concordat with the Holy See had been initiated with the government. In this, in Article 59, it is ordered that the beneficiaries must observe all the preceding customs. And although Article 47 states: "Regarding the Holy Viaticum and funerals, there will be agreement, if it pleases, between the Chapter and the beneficiaries," the Chapter argues that from this, the beneficiaries have not been absolved from the obligation to participate. Indeed, if the Prelate, when drawing up the regulation, had wished to exempt the beneficiaries from

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the obligation of providing for the funerals and the Holy Viaticum of the canons, he would have expressed this in clear words, since this custom had existed for two centuries. Thirdly, the defender argues that the observance, which, except for a few exceptions that have occurred since the origin of this controversy, has constantly continued for two complete centuries, favored by the canons and their insistence, can be alleged. Indeed, it can be proven, in chronological order, from the year 1680 to 1878, that the beneficiaries have constantly provided for the Holy Viaticum and funerals, and from those who belonged to a certain Confraternity...

[*Latin ed. p. 131*]

ILLERDEN. 431 Mutual, gratuitous assistance was assigned to these, some intervening freely; others, by receiving a certain established distribution. And concerning this intervention by the benefactors, omitting all else, it abundantly strengthens the record of the chapter. Therefore, when, in the year 1878, they neglected to provide this service of assistance, they were admonished by the Bishop, and were obliged to confess their error, as the Bishop writes. Indeed, the custom, a custom of a hundred years, and even more strongly, of two hundred years, or perhaps even an unforgettable custom, exhibits the title of "a better world"; *De Luca De benefic. discept. 32 num. 2*; *Rota coram Motines decis. 962" n. 31 et alibi sexcenties, ac S. C. O. in Lucana Praeeminentiarum 25 Iunii 1823 §*. This custom and similar ones are valid for acquiring privileges that are more unusual under common law; and therefore, all the more, they should be valid for asserting the right of the Chapters, about which we are speaking, as is stated by Lancellot, *De attent. part. 2 cap. 4*, not only because it is not contrary to the law, but because it is highly consonant with it and commendable in itself. Against the force of this aforementioned custom, only two objections can be foreseen by the patron, and first, that here the action is taken with regard to acts of charity. But it is noted that if anyone can be compelled, his actions cannot be said to be voluntary; especially if he is compelled by the force of laws. Furthermore, actions performed for the sake of divine worship and in the execution of a pious work, such as, for example, veneration towards the Most Holy Sacrament and piety towards the dead, are never presumed to be voluntary, but necessary; *Rota decis. 701 n, 5 pag. 43*; *decis, 54 n. 9 part 4 tom. 2*; and *decis. 107 n. 26 part. 7 Recent*. And furthermore, in the doubt as to whether an action has proceeded from mere will or rather from obligation, the interpretation that favors the Church must be taken; *Scarfantonius Lucubr. canon. tom. I, tit. 15 n. 24*. Moreover, repeated interventions and this multiplicity of actions completely exclude the nature of a voluntary act, especially

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considering the condition of the persons and the nature of the service.

[*Latin ed. p. 132*]

132. ILLERDEN. [This refers to a legal case or situation concerning "Illerden," the meaning of which is unclear without further context.] The omission of duties, which would cause scandal and extinguish the common office of piety; *Rota* before Ursino, decision 46, paragraph 4; but especially in decision 9, namely, in another case, heard before Muto in the year 1705, where certain beneficed individuals, having risen up against the canons, denied these obligations, under the pretext that they were acts of a facultative nature. The *Rota*, considering that "this repeated multiplication of acts" induces a very strong presumption that all things were done by the beneficed individuals "compelled and out of necessity," ruled in favor of the performance of the obligations. Similar cases are found in decision 25, before Bichio. Finally, since it is certain that the Chapter, by virtue of the jurisdiction and superiority it holds in its church, can indeed impose a reasonable, albeit temporary, duty on the beneficed individual; *a fortiori*, "the exercise of offices which are owed by the beneficed individual to the Chapter, by virtue of long-standing custom, cannot be impugned." Thus, the exception of a facultative act fails; as in a similar case, the *Rota* before Lancetta in Urgellen notes, citing decision 99 and other decrees and resolutions of the Auditory. Another exception, namely, that the Council of Trent, in chapter 3, session 20, does not mention viaticum and the funerals of canons as hours and divine offices, and therefore the beneficed individuals are not obligated to perform them, is of lesser importance. Indeed, it observes that the Council intended to preserve "the customs of those churches" in which not all reside or serve, "lest they receive less than one-third." And likewise, granting canons three months of vacation, it nevertheless wishes to preserve the customs that require a longer period of service from the Chapter. Similar principles apply: it is indeed established in the law, according to De Luca, *De iudiciis*, dispute 25, paragraph 49, that first the particular laws by which each society is governed must be considered, and then the common laws. And thus, the Council of Trent is invoked in vain by the beneficed individuals for their own cause. DEFENSE OF THE BENEFICED INDIVIDUALS. On the other hand, for...

[*Latin ed. p. 133*]

LÉRIDA. It has been observed that the obligation to attend the funerals of canons does not arise from those duties imposed upon beneficiaries by the very nature of the benefice. For, since beneficiaries are chosen for the purpose of assisting the canons in the performance of divine offices, only a specific duty is imposed upon them by reason of the benefice itself, namely, to attend the recitation of the canonical hours and the conventual Mass. Although the gloss on C. penult. De Cler. non resid. V. Assisios states that

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the duty of the beneficiaries is to serve the church, this is not sufficient grounds to impose upon them the obligation of which we are speaking. For, as Barbosa observes in De Canonie, c. 4, referring to the *assisios* and *mansionarios*: "Some are called hebdomadarii or even choristers," and they hold the first rank among the clergy. "Others, however, who are more distant from the canons, and are simply obligated to serve the church, are sometimes called *mansionarios*, to whom the name of beneficiaries should not be given." Since the beneficiaries of the church of Lérida belong to the first class, as they are clearly distinguished in the acts from those who serve, it cannot be said that their duty is simply that of servants. But, setting this aside, and granting that, without any distinction, the *inservientes* of the chapter should be called beneficiaries, it remains to be seen what the nature of this service consists of; and since the common law has not determined anything regarding it, it follows that the nature of this service must be defined by the statutes and customs of the place. Indeed, in this case, no obligation can be found either in the statutes or in any custom. For the canons have never been able to produce a statute by which it is precisely and explicitly ordered that beneficiaries attend the funerals of canons and the processions of the Most Holy Sacrament; and it can rightly be argued that such a statute is entirely lacking. For, when in the year 1868, Bishop Puigllat established the aforementioned statutes, commonly called the "provisional regulations," by which the service of the cathedral church was regulated, especially with regard to the beneficiaries, he himself included in the draft of the statutes...

[*Latin ed. p. 134*]

134. The chapter subjected the matter to its judgment. In this, a mutual obligation was established, both for the canons and for the beneficed clergy, to participate in the funerals and processions of the Most Holy Sacrament, whether these were for the canons or for the beneficed clergy. However, since this did not entirely please the chapter, it proposed certain modifications to the Bishop, which primarily aimed to preserve some distinction regarding the chapter's involvement in the funerals of canons and beneficed clergy. However, these proposals did not please the Bishop, and therefore, leaving the question untouched, the article 47 of the statutes was formulated in this way: "The matter concerning the Most Holy Sacrament and funerals is left to be resolved through agreement between the canons and the beneficed clergy." Since such an agreement was never initiated, it is evident that no trace of an obligation can be found in the statutes. And if nothing can be derived from the statutes, then nothing either favors the canons, the beneficed clergy claim. To demonstrate this, they stated that from ancient times, two confraternities or congregations of the clergy of Illyria have existed in this city, namely, that of the Most Holy Savior and of Saint Mary the Old. Both of these confraternities, whether of canons or of

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beneficed clergy, formerly held a place of honor in the cathedral church, according to established custom. The two confraternities, however, constitute entirely distinct societies in the administration of their goods and in other matters; in all other respects, they form one body and are united under the same Prior. Indeed, a pact exists between the members of the two confraternities, commonly called a "fraternity" or "brotherhood," by which each member is obligated, unless a legitimate reason prevents him, to assist at the funerals of his confreres and to perform other acts of piety towards them, as prescribed in the statutes. Indeed, it is certain that until the beginning of the eighteenth century, the canons, who were then members of the confraternity, attended the funerals of the beneficed clergy, just as the beneficed clergy willingly and always performed the same duty of piety towards the canons, as required by the statutes of the confraternities. However, at the beginning of that century, it happened that the chapter, although...

[*Latin ed. p. 135*]

ILLERDEN. 135. Although he presumed to retain his name within the Confraternities, he nevertheless refused to fulfill the agreement of the fraternity concerning the deceased beneficiaries. From that time onward, the secular, and indeed, the unforgettable custom ceased, whereby the beneficiaries participated in the Viaticum and funerals of the canons, and the canons participated in the Viaticum and funerals of the beneficiaries, as both were members of the fraternity of the two sodalities. In the middle of the 18th century, with the dissolution of the fraternity agreement, the canons established a stipend or distribution in order to encourage the beneficiaries to attend funerals and the Viaticum. Indeed, it can be observed that, although the custom of associating with corpses and accompanying them with the Holy Viaticum is very ancient, it does not seem precisely to be imposed upon the beneficiaries. As long as the fraternity agreement between the canons and the beneficiaries was in force, the participation of the beneficiaries in this agreement was to be understood; then, when a distribution was established for attendance, those who wished to receive the distribution were free to do so. However, in both cases, the participation should be considered voluntary or optional; in the former case, when the fraternity agreement was in force, the voluntary participation was indirect and consequential; in the latter age, when a distribution was assigned for attendance, the voluntary participation was direct and immediate. Furthermore, it is universally accepted that in civil law, there is no prescription, and that acts of mere free will and devotion, which can be performed or omitted at anyone's discretion, never create a custom with the force of law; X. 2 ff. De via publica et itinere publico; Ferraris v. Praescriptio §. 1 no. 17. And it is truly the case that the aforementioned assistance from the beneficiaries was free in both periods of time, both in the former and in

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the more recent, as is evidenced by the fact that they sometimes refused to provide such assistance. Therefore, since the custom does not seem precisely to compel the beneficiaries to perform this service, and since no other beneficiary is compelled to do the same, neither by virtue of statutes, which indeed leave the matter unaddressed, it is clear that...

[*Latin ed. p. 136*]

136. It is demonstrated from article 47 of the provincial regulations that it cannot be said that beneficiaries are free to relinquish the use of the wines of their benefices; rather, it would be necessary to consider them obligated in this regard. Having stated these and other things, the purpose was to elucidate the following question: Are beneficiaries obligated to contribute to the Holy Viaticum and funerals of canons in such a case?

RESOLUTION. The Sacred Congregation of Councils, after deliberation on May 16, 1885, decided to respond: Affirmative, especially considering the custom.

FROM WHICH ONE MAY GATHER:

I. That the jurisprudence loudly proclaims the importance of custom in creating a better world.

II. That a right born of custom is valid for acquiring privileges, whether they are in conformity with common law and commendable in themselves, or whether they are exceptions to common law.

III. That it is therefore not surprising that a long-standing custom has served to acquire for canons a right or privilege, which is not only an exception to common law, but is also highly in conformity with it and commendable in itself.

IV. That services rendered either through repeated actions or through long-standing custom are considered to be rendered out of necessity and obligation, or by law.

FROM THE 8TH GENERAL CHAPTER OF BISHOPS AND REGULAR CANONS OF ROMA CONCERNING LIQUIDATIONS, March 6, 1885.

His Excellency, Monsignor Augustus Mancini, currently invested with the Caracciolo di Martina prelate, in addition to the usufruct, also held the administration of a certain vineyard.

COMPENDIUM OF THE MATTER.

[*Latin ed. p. 137*]

In ROMA, 137, located outside the gate called by Saint Lawrence, and burdened with the obligation of two canons, one belonging to the Hospital of Saint Charles of the Lombard Nation, and the other, partly paid for with

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money, and partly with wine from the Abbey of Saint Lawrence. In the year 1875, the City of ROMA, for the purpose of expanding the public cemetery, seized the aforementioned vineyard, which was adjacent to a summer garden, offering a usufructuary sum of 74,542 *lire*. However, this sum was increased to 92,742 *lire* by order of a civil court, to which the usufructuary had appealed. During the legal proceedings, the City also required the usufructuary to deposit the value of the vineyard, amounting to 92,742 *lire*, in Gafsa. As a result, the usufructuary, besides receiving a small income of 270 *lire* for a few months, was obligated to pay an annual tax of 122 *lire*. When it came to dividing the money, which had been converted into a consolidated sum, between the *emphyteuta* and the *directarii*, several questions arose, both concerning the method of valuing the canon and its yield, and concerning the obligation of the *directarii* to pay a laudable sum, or not, and concerning the measure of the value of the consolidated shares: whether the value of the year 1877, or rather, the year 1884, should be assigned to them; and finally, concerning the compensation to be paid to the *directarii* for the tax commonly called the "tax on movable wealth," and, conversely, concerning their participation in the tax on the deposit paid by the usufructuary; and after attempts to reach an amicable settlement failed, the *emphyteuta* appealed to the Sacred Congregation of Bishops and Regular Canons, so that the matter might be resolved legally. A summary of the arguments: WHAT APPEARS TO OBSTRUCT THE *EMPHYTEUTA*. Regarding the first question, the *directarii* argue that the canon must be paid in a lump sum, at a ratio of 100 for every 4 *lire* of the canon, because the matter concerns ecclesiastical properties, for which this Sacred Congregation has established a standard for such payments in cases of emancipation.

[*Latin ed. p. 138*]

138 In *ROMANA*, inquit, in formulario, quo Sacra Congregatio Beneplacitum Apostolicum concedere solet, ad rem haec leguntur: « Sacra Congregatio Emorum ac *ROMANA* S. R. E. Cardinalium negotiis et Consultationibus Episcoporum et Regularium praeposita... Episcopo commisit, ut... petitam facultatem oratori pro suo arbitrio et conscientia concedat procedendi ad enunciatam Canonis redemptionem... ita tamen ut statuto pretio affrancationis ad rationem centum pro singulis quatuor libellis annuis canonis etc. » Quae dimetiendi regula, ut perpensum fuit, cum media proportionali et saliceti theorica concordat in leg. 2 Cod. de rescind. vendit. « ut nempe ex discrepantibus tribus summis coacervatis, resultans sumitur pro decernendo iusto rei pretio. Hinc si primus peritus rem quindecim aestimaverit, secundus viginti, ac tertius viginti quinque, si hisce tribus pretiis cumulatis emergit summa sexaginta, hac aequaliter tripartita, rei valor iustus erit in viginti. » Qua de re si in themate applicetur, mox citata regula elevandi scilicet caput ad rationem 100 pro singulis tribus libellis

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canonis, et huic summae addatur tum elevatio capitis ad rationem 100 pro singulis quatuor libellis ab H. S. C. decreta, tum etiam eiusdem elevatio ad rationem 100 pro singulis quinque libellis, a lege civili super affrancationibus statuta, media proportionalis erit ad rationem 100 pro singulis quatuor libellis canonis. Relate ad secundam quaestionem, quae fructuum liquidationem pro obiecto habet, directarii autumant sibi rependendos esse canonis fructus ad rationem 5,68 pro singulis 100 libellis a quovis onere liberos a die, quo vineae pretium investiendum erat ; quandoquidem ipsi huiusmodi reditum percepturi essent, si pecunia canonis valorem repraesentans usque ab initio singulis eorum tradita fuisset. Ne igitur, sine culpa, aliquid detrimenti capiant, aequum et iustum esse contendunt, quod fructus ad praedictam rationem et a die quo summa investienda erat ab emphytheuta.

[*Latin ed. p. 139*]

ROMANA 139 are settled. Hence, they argue that the *emphyteuta* is obligated to bear the loss, if he received a return less than half the value for several months from the price of the vineyard. The Cardinal Vicar, consulted for information and opinion, seems to favor the petition of the directors, either because of the reasons presented and the profit that the *emphyteuta* derived from this transaction; or because the perpetual canon must be fully paid, whenever the thing in its entirety has not perished, without regard to any loss or gain that may befall the *emphyteuta*, according to the well-known saying: "If the whole thing perishes, the *emphyteuta* is released." Fulgineo, in his work on *emphyteusis*, chapter on the payment of the canon, number 91, presents this reasoning: "Because the rent is paid, as a sign of recognition of the direct dominion, which is indivisible, and not for the fruits" (Roman Constitutions, 369, number 32). Therefore, as long as the dominion still endures, if the thing has not perished entirely, the *emphyteuta* is not excused; for when the house is burned, or the mill is *dirutum* by chance, even though the land is equal, he is nevertheless obligated to pay the rent, as stated in Surd. Constitutions, 197, number 11, where many cases are cited, and numbers 12 and following, and he can be compelled to rebuild the structure. There is another reason, which all Doctors concede, that if the *emphyteusis* is diminished to such an extent that the fruits from it are not sufficient to pay the rent, it is not extinguished, nor is it terminated; rather, the *emphyteusis* still remains a *emphyteusis*; therefore, he must still pay the full rent, and he cannot free himself from the payment of the canon. As a consequence of what has been discussed so far, the Cardinal Vicar believes that the consolidated deeds, which are subsequently delivered to the directors for the price of the canon, should be assigned the value they had at the time when the consolidation was acquired. Otherwise, it would be absurd to admit that the *emphyteuta* would profit from the money of the directors, when it is clear that the consolidation has a greater value than at the time when it was acquired

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by the *emphyteuta*.

[*Latin ed. p. 140*]

140 In ROMA, concerning the matter of the *laudemium*, it has been considered that, given the entirety of ecclesiastical law, it appears to be due, since it is a right of the *tralatitious* jurisdiction, that the *laudemium* must be paid whenever a thing subject to *emphyteusis* passes into the dominion of another; and this is given as a reward for the consent that the direct lord gives to the transfer of dominion. For the *laudemium* is said to be from "lauding," because the direct lord praises and approves the new *emphyteuta*; *Redactus de Rebus Ecclesiasticis, de non alienandis*, number 3. Therefore, when it is established by fact that a vineyard subject to *emphyteusis* has passed into the dominion of the municipality of ROMA, the *laudemium* must be paid in full. Furthermore, the amount paid for the *laudemium* should be one-fiftieth of the price. The *laudemium*, or fiftieth, is due to the lord in proportion to two *scuta* for each centurial; *Fulgentius de Jure Emphyteutico, Cap. De Laudemiis*, number 5, and there, number 7. It must be noted that this *laudemium*, or fiftieth, to be paid, must be calculated based on the value at the time of the new grant and alienation, and not at the time of the original concession. And the opinion of Bartoli states that this is the true price that the seller receives, even if the buyer pays more, etc. Finally, concerning the first part of the ultimate doubt, it seems just and equitable that compensation or indemnity be provided to the direct lords for the new tax, commonly called "taxes on movable property," which they are now required to pay, either directly or in some other way, provided that it is certain that the canon is due to the direct lord, free from any burden. Therefore, in order that the integrity of the canon is not diminished, compensation, which equals the diminution, is absolutely required. Regarding the participation in the tax for the deposit executed by the *emphyteuta*, the direct lords argue that they owe nothing, because, as the Cardinal Emus V i carius rightly observes, the *emphyteuta*, in executing the deposit, has in view his own benefit, and not that of the direct lords, to whom the canon is fixedly imposed and must be paid.

[*Latin ed. p. 141*]

ROMANA 141, let it be decided. Given these circumstances, those who argue that the prayers offered by the *emphyteuta* under this heading should be considered null contend: For it is not fitting for one to embrace profit while despising the burden attached to it; *Leges Unicae*, Code, on the same matter, title 55, section 60. WHAT APPEARS TO FAVOR THE *EMPHYTEUTA*. On the other hand, the *emphyteuta*, bound by the provisions of the Italian civil code concerning emancipation, believes that a canon should be paid to the direct lord, at a rate of 100 for every 5 *libellae*

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of canon. Indeed, article 1564 of the aforementioned code stipulates that the *emphyteuta* shall pay the canon to the direct lord, according to the aforementioned measure, whenever the *emphyteuta* property is emancipated. Regarding the other two questions contained in the third and fourth doubts, it has been considered favorable to the *emphyteuta* that he has the right to better provide for himself by demanding a greater return as compensation for the use of the property, which he is forced to relinquish. Whether the *emphyteuta* can be considered to hold a consolidated right in place of the direct lord's use: since it is well known that it is better for a thing to endure than for a person. Certainly, what is consolidated is seen to lack stability, since it depends on the stability of things and persons. The opponents argue that the request regarding the payment of the laudum should be rejected from the very beginning, based on the reasoning that the elements necessary for the payment of the laudum are lacking, since we are not dealing with a voluntary exchange or sale, but with a compulsory expropriation, to which both the direct lord and the *emphyteuta* must submit, whether they will or not. However, regarding the doubt as to whether such an obligation can arise, it has been observed that the arguments of the opponents do not greatly advance the cause, due to the commonly accepted axiom that, in cases of doubt, we must be more inclined to grant freedom. Finally, with regard to the indemnity, it has been noted that it is most in accordance with equity to not compensate the *emphyteuta*.

[*Latin ed. p. 142*]

442 In ROMA, in order to ensure fairness, direct lords should be shown the accounts for the tax on movable property that they must pay from the day on which they receive the consolidated sum in lieu of the canon. For the emphyteute himself is burdened with this tax for the amount due to him. Conversely, it has been noted that, with regard to the greater profit, it would be just that the direct lords also contribute to the payment of the tax, in proportion to a certain rate and to the greater profit received, since it is a common principle in law that expenses are equally borne, both for the collection of fruits and for their custody; *Rota dec. 289 p. 19 recent*. With these points noted, the following questions have been proposed to be clarified.

I. In the second case, should the head of the canon owed to the Abbot Commendatario be increased, and if so, to what amount?

II. In the third case, should the head of the canon owed to the Hospital of the Most Holy Charles and Ambrose be increased, and if so, to what amount?

III. In the third case, after the portion of the canon has been paid, and to what amount should the difference and the increase be settled, relating to the income received by the emphyteute?

IV. In the fourth case, should the value of the year 1877, or rather, the

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year 1884, be assigned to the direct lords in the consolidated sheets?

V. In the fifth case, is the emphyteute obliged to pay half of the laudumium?

VI. In the sixth case, to what amount should the tax on movable property be refunded to the direct lords, and should they contribute to the deposit tax?

RESOLUTION. The Sacred Congregation and the Regular Congregation, having carefully considered the proposed questions, decided on March 6, 1885, to respond as follows:

To I: Affirmative, and the amount should be paid, with the head increased in the ratio of 100 for each 4 *libelli* of the canon.

To II: Affirmative, as in the first case.

To III: ... (The text is incomplete.)

[*Latin ed. p. 143*]

ROME, 143, affirmative and to be completed regarding what is of importance between the already accepted matters and the difference up to the highest level. Regarding IV, affirmative to the first part, negative to the second, and according to the understanding of the Reverend Father Secretary. Regarding V, affirmative. Regarding VI, affirmative to the first part, negative to the second, and according to the understanding. FROM THESE, THE FOLLOWING ARE UNDERSTOOD: I. That the emancipation of an emphyteutic property cannot proceed without the consent of those who have an interest. II. And that it must be in accordance with the disposition of the Holy Congregation of Bishops and Regulations, if the property is to be redeemed for a pious cause. Therefore, the price of emancipation must be determined in proportion of one hundred for each four annual canons. III. And whatever was spent less for the acquisition of the aforementioned bonds, commonly called "di consolidato," must be placed in a safe, lawful, and profitable investment in favor of the direct lord. IV. In determining the value of such bonds, it must be considered the time when the consolidated bond was acquired, and the fruits due to the direct lord must be measured according to that standard. V. The emphyteuta shall always be bound to pay the canon to the direct lord, and this shall be immune from any reduction; and he shall only be released when the emphyteutic property has completely perished. VI. A laudium, so called, shall be due to the direct lord in the proportion of two scudi for each centenario, whenever the emphyteutic property passes to another domain, whether freely or by force. IMOLA. REGARDING THE REDUCTION OF THE CHARGES OF MISSIONS, June 5, 1885. Reverend Father James Mary Manzoni, having been assigned to certain properties, the Chapel under the title of Saint Mary in Cosmedin and Saint Nicholas Baren, in the Church of

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Saint Stephen. A SUMMARY OF THE FACTS.

[*Latin ed. p. 144*]

144 IMOLEN. A town commonly called Barbiano, in the diocese of Imola. A perpetual endowment was established there, with certain conditions, of which the following are the most important. Namely, after deducting the expenses, from the remaining revenues, so many Masses, and the same number of prayers, should be celebrated, along with an alms of 10 *oboli* for each. Furthermore, that those descended from the founder should be preferred to outsiders in the selection of a chaplain, and that, in their place, if outsiders were appointed, double the alms for each Mass should be paid. Moreover, the current chaplain, Vincent Borea, who is descended from the founder's female line, having spent more than justly, 628.82 *lire* to satisfy debts, requests the suspension of the debts in compensation for the aforementioned sum, and furthermore, he requests that in the future, the number of Masses be reduced to a rate proportionate to the revenue, with double the alms, in accordance with the will of the founder, as expressed in the foundation documents. A Synopsis of the Dispute. PRAYERS SEEM TO BE DUE. Although it is abhorrent in law to alter the pious wishes of testators, and to reduce the Masses prescribed by them; nevertheless, it is consistent with the teaching of all ecclesiastical writers that this can be done, provided there are legitimate reasons. Benedict XIV lists two reasons for which the reduction of Masses may legitimately be granted, namely, either a decrease in revenue, or an increase in alms decreed by the Bishops in Synods. Hear the esteemed Pontiff, who in the Diocesan Synod, book 13, chapter last, states: "Therefore, the reasons for which it is permissible to consider a reduction are usually, perhaps always, a decrease in revenues that were assigned for the fulfillment of obligations; sometimes, however, an increase in alms decreed by the Bishops in Synods. And this is especially true when the obligations were imposed not demonstratively, but definitively. And it is certainly just that whenever the revenues left for the execution of the will of the pious are diminished..."

[*Latin ed. p. 145*]

It is fitting that the burdens also be increased in proportion. Indeed, as Fagnan teaches in Chapter 2 concerning constitutions, the fruits ought to correspond to the burdens. This is confirmed by the Sacred Congregation of the Council in Valladolid on May 22, 1784, §. However, in *Nullius* of Saint Martin, and also in the Reduction of Burdens of Todi on January 27, 1827, this reasoning is presented: namely, that if the founders had foreseen that the revenues would be diminished, they would not have imposed such heavy burdens, and would certainly not have disapproved of a reduction. This must be especially admitted if the diminution occurred either due to public taxes, or calamities, or due to the vicissitudes of time, as is evident

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in the Reduction of Masses of Mazarin on July 1, 1846, and in Santiago de Compostela on July 5, 1862, as mentioned above. Furthermore, it is also read in Imola, in the Decree of the Sacred Congregation of the Council of February 17, 1821, that the Sacred Congregation of the Council granted a reduction of Masses due to the increased alms collected by the Bishops. Now, since it is clear from the facts that both of these causes were truly present, the requested reduction of Masses ought to be granted, and it should be made in proportion to the revenue, with double the alms, since the petitioner is clearly descended from the founder without any doubt. All that has been said concerning the reduction of Masses also suggests that something should be said about absolution with regard to past omissions, since it is clear that the revenues of the chapel have been diminished, while the good faith of the petitioner seems to be lacking. Indeed, the Sacred Congregation of the Council teaches in Brugnolen, in the Decree of Absolution of May 14, 1823, and in Terracina on March 8, 1860, that absolution for past omissions is usually granted by the Apostolic See when good faith and the diminution of revenues are present. For, absolution is granted according to the law, if the pious obligations were not fulfilled without fault, and if there is no reason why they could not be fulfilled. Moreover, it has been considered that the grace of absolution can even be granted in the presence of fault or negligence, but with a condition, for example, that a single Mass be celebrated for the sake of absolution and remission concerning past omissions, etc., as taught by Aeta, Volume 18, page 207.

[*Latin ed. p. 146*]

146. OBJECTIONS ARE RAISED. On the other hand, it has been considered that any reduction in income is not sufficient to justify a reduction in the number of Masses, but rather that a reduction in the number of Masses is required, which, according to the teaching of Benedict XIV, must be proportionate to the burden imposed. This is in accordance with the common understanding of the law: "First, other burdens are reduced, before the number of Masses is diminished." Given these legal precedents, it would seem that, saving the patrimonial title, one must proceed to suppress the double alms before a reduction in the number of Masses is granted. Indeed, the pious and religious will of the testators must prevail over carnal and worldly interests, especially those that concern the divine worship, or the comfort of souls in Purgatory: *Ultima Voluntas*, Cap. 13, question 2; *Codex*, Book 2, on sacred matters; Council of Trent, Session 22, chapter 6, on reform; *Clementina*, concerning religious houses, etc. Furthermore, it has been added that, according to the opinion of Benedict XIV, a reduction must never be granted in any case, when the bequest for Masses has been conceived not in a specific manner, but in a demonstrative manner. To determine when a bequest is conceived in a specific manner, and when in a demonstrative manner, the teaching of the praised Pontiff is cited, who,

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in Book 13, on Diocesan Synods, chapter last, states: "His Holiness has ordered that it be brought to your attention, that after mature consideration and examination of the dispositions, and of any foundations by which the aforementioned obligations for Masses are found, those bequests or foundations will be considered to be conceived in a specific manner, if the founders, by bequeathing, or in some other way, first began with the prayer or disposition before assigning the property, and then added the Masses; and in this case, such obligations can be regulated according to the proportion of manual alms; otherwise, if the founders began with the prayer, or disposition, after imposing the burden, and then assigned the property, then the burden is said to be conceived in a demonstrative manner, and the heirs of the founders are obliged, by your authority, to maintain the said burden perpetually, and to supplement the deficient sum, both for the past, and for the future."

[*Latin ed. p. 147*]

IMOLEN. 147 And it is declared by the very Pontiff in the aforementioned passage, n. 29, that the aforementioned instruction is to be observed as a matter of law. There, distinguishing between perpetual Masses and those offered from stipends, he observes that, although legitimate causes may exist, a reduction [of the stipend] cannot be granted. For, as the Most Holy Council beautifully explains in Compostellana, in the aforementioned decree of December 20, 1862, concerning Masses offered from stipends, for which alms have been received, and if the celebration of these Masses is neglected; a reduction cannot be granted, but rather a remission or composition is required, which is reserved to the supreme judgment and authority of the Holy See. However, if it concerns perpetual Masses, it must be examined whether there is anyone who is obligated to supplement a contingent diminution of the revenue; if someone is found to be bound by this obligation, then he must be considered obligated to make up for what has happened. Having considered these points on both sides, the proposed questions are to be answered: I. Whether and how a reduction of Masses should be granted in a case? II. Whether and how past omissions should be addressed in a case? RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, having considered the matter in plenary sessions on June 5, 1885, decided to respond as follows: Regarding the first: The Masses, which have been assigned since July 1884 up to the present, amounting to 628.82, are to be reduced in the future to half, until the aforementioned sum is fully compensated. Afterwards, the Masses are to be celebrated at the full rate of revenue, with double the alms, according to the resolution of March 4, 1872, concerning question III. Regarding the second, see the provision in the first. FROM WHICH IT MAY BE GATHERED: I. That a reduction of Masses, although odious in law, may be granted in a case, if

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legitimate causes intervene, by the Supreme [Authority].

[*Latin ed. p. 148*]

148 IMOLEN. It is customary for bishops to grant indulgences. Such causes, according to the teaching of Benedict XIV, consist either in a decrease in revenues, or in an increase in alms collected by the bishops in Synods. II. Provided, however, that the bequest of Masses is not demonstratively begun, that is, by first stating the intention to relieve the burden and then assigning a fund, but rather it is expressly left to the testator, or the intention to assign a fund is stated first, and then the imposition of the burden is added. III. In this matter, the burden of Masses is to be considered as expressly imposed. IV. Absolution regarding past omissions is to be granted, if the pious obligations were not fulfilled without fault, and if there remains nothing from which they can be fulfilled. V. If, however, there is fault or negligence, absolution is to be granted, along with the burden of celebrating one Mass, or some other light penance, for the sake of the grace of absolution and remission.

THEATIN. OR VASTEN. A SUMMARY REGARDING THE RIGHT TO NOMINATE PAROCHIAL ASSISTANTS.

Between the Chapter of the cathedral church dedicated to Saint Joseph and the Archpriest, who is the parish priest of the same church, there have been many disputes, especially regarding the care of souls to be exercised by the canons in turn, and also regarding the existence of a habitual right of care, which the Chapter claimed belonged to it, and finally, regarding the right to choose parochial assistants, which each party endeavored to assert for itself.

The Sacred Congregation of Bishops and Regular Canons, to which the cause was presented for its proper definition, as is customary, requested the opinion of the Metropolitan Archbishop. He, in a long and careful letter, after discussing the history and state of the various questions, addressed the matter concerning the nomination of parochial assistants, stating that the right to nominate such assistants...

[*Latin ed. p. 149*]

THEATINES, OR FASTEN. The chapter decreed that neither of the litigants should choose the pastors, but that it should be their prerogative. Among these matters, the chapter had issued a declaration from the Holy See, from which it was clear that it would explicitly send a messenger regarding the care of souls to be exercised by the canons in turn, and implicitly also regarding the other matter, concerning habitual care, which it also claimed as its own. In accordance with this declaration, which the opposing party had accepted, the entire cause seemed to revolve solely around the right to choose assistant pastors, which each of the three parties claimed as belonging to them. Since it was considered necessary to first

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determine, for the proper definition of this matter, whether habitual care belonged to the chapter or not, it was therefore proposed, as a matter of duty, to first address this very question. In a concise discussion, the chapter maintained that habitual care belonged to it; and it believed that it could demonstrate this not only from the Bulls of Innocent XIII, dated October 1, 1723, and Clement XII, dated July 1, 1739, by which the former erected the parish church of Saint Mary into a collegiate church, and the latter, likewise, the parish church of Saint Peter into a collegiate church; but also from a certain plan drawn up in 1831 by the then archbishop Fasten, and approved by the government, after which, from the two aforementioned parish and collegiate churches, only one was established, under the invocation of Saint Joseph; and also from the Bull of Gregory XVI, beginning with the words "Justa et honesta quaeque," issued in 1840; but also from the Apostolic Bull "Omnium Ecclesiarum felix," of Pope Pius IX, which, dated July 23, 1853, elevated the aforementioned parish and collegiate church of Saint Joseph into a cathedral. Indeed, in the Bull of Innocent III relating to the parish church of Saint Mary, the following is written: "The parish church of this kind, when it is to be erected into a distinguished collegiate church, as is preferred, must, even before that, be administered solely by the chosen son of that Rector," so that all parochial duties may be supported, and it APPEARED THAT THE CHAPTER WAS GAINING ADVANTAGE.

[*Latin ed. p. 150*]

150 THEATIN. OR FASTEN. > it, and also the chosen Canons and Mansionaries > of the aforementioned parish church of St. Mary Major, > in the exercise of the care of souls, and who minister > throughout the week, and who assist him, as the Rector > who, up to now, has been in charge of the aforementioned > parish church has been accustomed to do, can and shall > be able to do likewise with similar chosen Canons and Priests. > Regarding the church of St. Peter, elevated to a Collegiate, > Pope Clement XII likewise prescribed the following: "The Canons, > together with the chosen Prior, shall assist in the exercise > of the care of souls in this manner, in turn, as previously > all the Presbyters, now called Canons, used to do, with > their assistance." > Furthermore, in the plan drawn up by the Archbishop of Vasten, > under the impetus and approval of the government, in the year 1831, > in order that the spiritual good of souls might be more effectively > promoted in the care of souls, the following prescriptions are found: > "The care of souls shall henceforth be exercised in the same > manner as it was before the suppression and union of the two > Collegiate churches, namely, by the Canons and Mansionaries > who are currently present, since at that time, in accordance > with the force of the Apostolic Constitution concerning the > aforementioned Collegiate churches, after examination by the > Ordinary and canonical installation, the burden of assisting > the pastor in the care of souls was incumbent upon them." > It

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has been considered that this plan has gained greater force > and authority from the aforementioned Bull *Iusta et honesta* of Gregory XVI, > who, in the year 1840, recognized the Chapter of Vasten, > increased by ten other Canons by the Archbishop, according > to the aforementioned plan, and confirmed the provisions > regarding the manner in which the care of souls is to be exercised, > which he himself had laid down. Finally, the Most Blessed Pope Pius IX, > by the Bull *In Apostolica omnium Ecclesiarum decorando*, > granted the aforementioned church a more distinguished title, > and made the following dispositions: "The church > which exists there under the invocation of St. Joseph > shall be raised to the rank of a parish and a Collegiate."

[*Latin ed. p. 151*]

THEATIN. OR FASTING. 151 "We raise and elevate, and we restore the former title of the Collegiate Church, and we completely extinguish and suppress the Chapter of Collegiate Canons, reserving, however, for it the name of Saint Joseph, with the same care for souls, which must be exercised and practiced perpetually, just as before. From the privileges granted both in fact and in law, it is easily deduced that the habitual care rests with the Chapter. As a consequence of this habitual care, which it enjoys, the Chapter claims the right to choose assistant pastors, in accordance with the doctrine transmitted by the Holy See in numerous resolutions, especially in the document concerning the care of souls dated January 12, 1726. Indeed, there was a dispute between the Fiscal Advocate of the episcopal court of Aliphana and the Chapter, regarding whether this habitual care belonged to the Chapter, and, if so, whether the Chapter possessed the faculty of appointing canons who should be assigned to the exercise of the care of souls at the end of each year. The Fiscal Advocate argued that there was no sufficient proof to establish that the habitual care of Saint Mary Major of Pedemont belonged to the Chapter and the Canons; he further argued that, to the extent that the habitual care belonged to said Chapter and Canons, they could never have appointed two canons at the end of each year who had exercised the care of souls during the year. The Chapter and the Canons, on the contrary, asserted that there was no doubt that the habitual care belonged to them, and that they possessed the faculty of appointing two canons as previously expressed, for the same purpose; and they maintained that this derived from the decrees of the Holy Congregation of Bishops and Regular Canons issued in the year 1601, and which had always been demanded for execution. Hence, in the aforementioned Congregation, the following two questions were proposed concerning the matter at hand: I. Does the habitual care of the same Church belong to the Chapter and Canons of Saint Mary Major of Pedemont, in this case? If

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affirmative. II. Can the same Canons, at the end of each year,

[*Latin ed. p. 152*]

152 REGARDING THE MATTER OF THE FAST. Concerning whether, in the case of the election of two Canons for the exercise of the actual care [of the parish], they ought to elect priests outside the jurisdiction of the Chapter, or whether they ought to elect priests within the jurisdiction of the Chapter, the following response was given by the Most Reverend Prelate: Regarding the first question: affirmatively. Regarding the second question: affirmatively concerning the first part of the doubt, and negatively concerning the second part. From this resolution, it is clearly evident that the right of electing assistant pastors belongs to those who have the habitual care [of the parish]. Therefore, the Chapter concludes that the right of nominating assistant pastors in the exercise of the care of souls belongs to it, since it is confident that the habitual care resides with it, as no document casts doubt on this.

WHAT IS FAVORABLE TO THE ARCHPRIEST. The Archpriest, on the contrary, vehemently argued that the Chapter had been deprived of the habitual care, and that the care of souls belonged to him, both in actuality and in habit. To demonstrate this, he cited the royal decree of the year 1808, from which, he said, it is clearly evident that the care of souls does not belong to the Chapter, but to the Archpriest. Indeed, in article XII of the aforementioned decree, the following is read: "The care of souls shall be annexed to the dignity of the Archpriest, which is the fourth dignity of the Chapter of St. Joseph." Furthermore, in article X, where the manner of exercising the care is discussed, the following is stated: "The parish is administered by the Archpriest for the time being, and by six Curates." Finally, in the end of article XV, the following is prescribed: "Until six Curates are appointed, the members of the Chapter (with the exception of the four dignities, the Canon Theologian, and the Penitentiary) shall provisionally and temporarily perform the duties of the Curates." This royal decree, having been canonically confirmed by the Bull of execution of the year 1808, by virtue of which the Chapter of Vástense was established; and having been approved by legitimate authority, and subsequently validated by the Concordat of the year 1808; and finally, having been solemnly sanctioned by the Bulls of two Supreme Pontiffs, namely Gregory XVI in the year 1840 and Pius IX in the year 1853, it has the force of obligation.

[*Latin ed. p. 153*]

THEATINES, OR FASTING. 153. He has declared that he can prevent anyone from raising doubts. Furthermore, in order to demonstrate his right more and more, the Archpriest brings forward a more recent document, namely, the judgment of the lay tribunal to which the Chapter itself had appealed, so that in the matter of the parochial right, a definition might

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be established. Indeed, this tribunal, having pronounced its judgment in favor of the Archpriest, declared that the parish priest, by his very office or activity, was not attached to the Collegiate Chapter. After this, addressing another question, namely, the right to nominate assistant priests, he affirms that this right belongs to him, and he seeks to prove this with a twofold type of argument: namely, by citing precedents and by presenting a document from the Archdiocesan Curia. With regard to precedents, the Archpriest asserts that, with the exception of the first seven months in which the care of souls was exercised by turns, from the year 1808, when the parish was established, to the present time, or for a period of 76 years, assistant priests have been continuously chosen by the Archpriest for the time being and approved by the Archdiocesan Curia, and that this can be demonstrated to the highest degree from the parochial books. He also contends that from the aforementioned parochial books it is equally evident that, from the year 1849 to the present day, assistant priests have been continuously chosen by the Archpriest Spataro himself, and presented to the Archdiocesan Curia for their approval. He states that this practice is confirmed by letters issued by the Archdiocesan Curia on November 20, 1853, and sent to the Chapter regarding the rejection of certain new articles of the Chapter statutes, in which it was stated that the care of souls would henceforth be exercised by turns by the Chapter. Indeed, noting that this article was inconsistent with established practice, the Curia wrote to the Chapter with the following words: "The statutes of this Church cannot be approved, nor can they be subjected to royal sanction, unless first the third article is reformed concerning the care of souls, which, as..."

[*Latin ed. p. 154*]

154. CONCERNING THEATINUS. OR FASTING. "As it was before, so it must remain. Curates, assistants to the parish priest, must be chosen by the parish priest and approved by the Ordinary, to whom it pertains, according to the methods prescribed by the king and the canons of the Holy Church, etc." With these two arguments, the archpriest, without any shadow of error, declared that the right to choose parish assistants belongs not to the Chapter, but to the archpriest for the time being, and that the archbishop can claim no other right than to approve the assistants chosen by the archpriest.

WHAT APPEARS TO BE FAVORABLE TO THE ARCHBISHOP. In his information, presented in the Most Holy Office (H. S. O.), the archbishop, giving an account concerning the election of parish assistants, denies that these, as is asserted on the contrary, have been chosen for 76 years by the archpriest for the time being. On the contrary, he affirms that this right belongs to the archbishop, and that this is far from doubtful, as evidenced by letters written by the Vicar General B. to the Archdeacon on March 20, 1849, in which, in the name and by the mandate of the Archbishop

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Theatinus, it was prescribed that a certain priest named C. be sent to the Collegiate Church of St. Joseph, in place of the Canon B., as an assistant economist. He also states that the archpriest falsely claims that, since the year 1849, parish assistants have been continuously chosen by him. The archbishop observes that such elections were not made by the archpriest, but by the Vicar General acting in the place of the archbishop himself, since it is evident that the Vicar General has almost always performed his office. He does not even need to present the letters that the Curia wrote to him on November 20, 1855, on the occasion of the proposed changes in the administration of souls, as the meaning of these letters is far different from the one that the archpriest tries to ascribe to them. For at that time, the Archbishop Theatinus prescribed that nothing should be changed in the administration of souls, and that everything...

[*Latin ed. p. 155*]

THEATINA. OR FASTING. 155. As had previously been customary, he wished to indicate that the election of parochial assistants was to be carried out by the Theatine Curia. However, the Archbishop observes that, even granting, but not conceding, that the meaning attributed to the aforementioned letter by the Archpriest is correct, nevertheless, he considers that it has lost all force in light of a subsequent decree, which the Archbishop De Marinis issued in 1860 during the Sacred Visitation. Indeed, since this decree stipulates that the care of souls is to be exercised by the Chapter and the collegiate clergy, excluding the Archdeacon, the Singer, the Treasurer, and the Canonical Theologian and Penitentiary; and that the Archpriest is to be assisted by six capitulars; it is clear that no right regarding the nomination of assistants has been granted to the Archpriest by such a decree. In such a complex array of circumstances and events, it was deemed, in accordance with the common opinion of canonists, that there are two kinds of parochial assistants or co-operators. Namely, those who are assigned to the parish because of some permanent infirmity of mind or body, or because of a lack of necessary knowledge, rendering them incapable of administering the care, as stated in Decree Lib. 3, title 6, chapter 3, and those who are added to the parish when the population is so numerous that the parish priest alone cannot suffice to administer the sacraments. The assistants of the second kind, who are commonly called Vicars Curate or vicars of the parish, differ from the others in several respects, as Bouix de Par. p. IV, c. 2, § 1, states. The former are nominated by the Ordinary, while the latter are nominated by the parish priests, and both are approved by the Ordinary. Parish priests can claim this right in virtue of Chapter IV, session 21 of the Council of Trent, where the following is prescribed: "The *scopi*, even as delegates of the Apostolic See, in all parochial or baptismal churches, in which the people are so numerous that one pastor cannot suffice to administer the ecclesiastical sacraments and to perform divine

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worship, must compel pastors, or others..."

[*Latin ed. p. 156*]

156. CONCERNING PARISH PRIESTS AND VICARS. "A parish priest maintains as many priests as are necessary to administer the sacraments and to celebrate the divine worship." Concerning this disposition, as discussed by the Council of Trent, Bouix, in the aforementioned location, section 2, states: "Indeed, when the Fathers of Trent decree that bishops should compel parish priests to add vicars to their assistance, they clearly and equivalently attribute this designation to the parish priests themselves; for if this designation were to be made by the bishops, they would not have used the formula 'compel parish priests to add vicars.' Rather, it is true that in the latter case, the parish priests add vicars. Moreover, if a vicar is appointed by the bishop, and is designated and established solely by the authority of the bishop, then the parish priest cannot be compelled to add this vicar to his assistance, provided that this vicar has already been designated and established by the bishop himself. Therefore, either the Fathers of Trent used an absurd and ridiculous formula (which, of course, it is forbidden to say), or the appointment of vicars, or rather, their election and designation, pertains to the parish priests themselves. However, this does not prevent that such vicars, chosen by the parish priests, should first obtain approval from the bishop before they can exercise their office, as will be said later." The aforementioned author affirms that the Holy Congregations have followed this opinion, citing Milan, April 26, 1732, where the following is read: "It concerns a certain collegiate church, which was also parochial. The habitual care resided with the Chapter, while the actual care resided with the Provost. Among other things, the following question was proposed: To whom does the right of choosing a coadjutor belong in the exercise of the care, whenever it is necessary? And the Holy Congregation responded: It belongs to the Provost, with the approval of the ordinary. From this, you see that the designation of vicars pertains to the parish priest, even when he has only actual care, while the habitual care remains with the Chapter." The doctrine of the Holy See's doctors is in conformity with this.

[*Latin ed. p. 157*]

THEATINS, OR VICARIATES. 157, among whom Fagnanus is cited, who in Chapter "Consultations concerning a sick cleric," number 13, states: "Although the authority for establishing perpetual vicars in benefices belongs to the Bishop, nevertheless, pastors and perpetual vicars can certainly assume temporary vicars without the Bishop's license, provided they are known, and that their promotion is established. However, today they must be approved by the Ordinary, etc." For further details on this matter, one can consult the Constitutions of Innocent XIII concerning the

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Apostolic Office, and of Benedict XIII, which begins with "In supremo." Furthermore, it has also been considered, in general terms, that the election of coadjutors should be carried out by the Chapter, whenever the habitual care pertains to cathedral or collegiate churches. It is also to be noted that habitual care itself, by law, pertains to the Chapter of the cathedral church, since the Bishop constitutes the senate, and this is the practice observed even in this venerable city of Rome. With these and other matters noted, the following questions were proposed: I. Whether habitual care pertains to the Chapter of Vástense in this case. II. How and by whom assistant pastors should be elected and confirmed in this case. RESOLUTION. After mature discussion by the Sacred Congregation and the Regulars, on June 5, 1885, it was decided to respond as follows: - ad II. Coadjutors are to be nominated by the Archpriest and confirmed by the Bishop. Coadjutors, on the other hand, are to be preferably chosen from among the chapter members who are present and suitable for that office. FROM WHICH ONE MAY GATHER: I. That vicars are to be chosen by the Ordinary to assist the pastor, either because of some permanent infirmity of mind or body, or because of a lack of necessary knowledge that renders him unfit. II. That coadjutors who are to assist the pastor are to be chosen by the pastor and approved by the Ordinary, when it is necessary.

[*Latin ed. p. 158*]

158. THEATIN. OR YEAST. The people are so numerous that the parish priest alone is not sufficient to administer the sacraments, according to Canon IV, Session XXI, of the Council of Trent, III. This right belongs to all parish priests, in whom, besides the actual care, also resides the habitual care. I. Indeed, it pertains even to those who have only actual care, provided that the habitual care remains with the Chapter. V. Furthermore, in a parish, the parish priest is to choose coadjutors preferably from among the canons, because there are reasons which seem to indicate that the canons have been adorned with the office of assisting the parish priest in the exercise of the care of souls. VI. However, not just any canons are to be chosen by the parish priest and confirmed by the ordinary; but only those who possess the qualities required by law for the exercise of that office.

FROM THE SACRED CONGREGATION OF INDULGENCES, PLACENTIA, regarding doubts concerning the formula to be used by bishops in granting the Apostolic blessing with a plenary indulgence. The Ceremonial of the Episcopal diocese of Placentia, in the work entitled "Praxis Pontificalis" by the esteemed Herdt, concerning the faculty with which bishops possess to grant the Apostolic blessing, along with the following plenary indulgence, states: "If the reading of the Apostolic letters is omitted, lest the people be kept in the church for too long, and only the formula - 'attentis facultatibus, etc.' - is read in Latin and the vernacular language, so that it is understood that this is a delegation, the

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Sacred Congregation of Indulgences declared that this rite and formula, given the reasonable reason stated, are truly sufficient to bestow the Apostolic blessing, provided that the formula - 'attentis facultatibus, etc.' - makes it clear to the faithful that this blessing has been granted only by delegation." Now, this Sacred Congregation of Indulgences and the following Sacred Relics humbly request a solution to the following doubts: 1. Whether the response of this Sacred Congregation, as reported by the esteemed author and found in the collection of Decrees, which is read under the date of June 30, 1840...

[*Latin ed. p. 159*]

Regarding a general question, namely: Whether, whenever a reasonable cause is present, it is permissible to omit the reading of Apostolic letters, especially if they have already been read completely and repeatedly, or not? And to the extent that the answer is negative.

2. Whether, considering a reasonable cause as mentioned above, it is permissible to use this brief summary in the vernacular language, for example, as follows: "On II S. [Holy Saturday], the Most Holy Pope Pius IX, in his Brief, already published on several occasions in this Cathedral on January 29, 1876, in the thirtieth year of his pontificate, signed by the Most Eminent Cardinal Asquini, having granted to His Excellency, our Bishop, Giovanni Battista Scalabrini, the faculty to solemnly bless his people, and in the name of the Roman Pontiff, to grant him the Plenary Indulgence from the day of his consecration until he presides over this Church of Piacenza on two of the most solemn days of each year, namely, on the day of Easter and on another day of his choice; today, the aforementioned Reverend Father makes use of the faculty granted to him for the good of his beloved flock."

The Sacred Congregation for Indulgences and Sacred Relics, having considered the aforementioned doubts on July 24, 1885, responded as follows:

1. Affirmative to the first part, Negative to the second.

2. As provided in the first.

Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on the same day, July 24, 1885.

I. B. CARD. FRANZELIN, Prefect.

JOSEPHUS IVI. CAN. COSELLI, Substitute.

FROM THE CONGREGATION OF THE INDEX: DECREE, on Feria II, September 7, 1885.

The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord our Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of false doctrine, and concerning their proscription, expurgation, and permission throughout

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Christendom.

[*Latin ed. p. 160*]

160 The Decree of the Congregation for the Doctrine of the Faith, held in the Vatican Apostolic Palace on September 7, 1885, condemned and condemns, proscribes and proscribes, and ordered that the following works be referred to the Index of Prohibited Books, and it orders that they be so referred:

I. *La Corte e la Società Romana nei secoli XVIII e XIX*, by David Silvagni. Three volumes, pages 582, 770, and 730. Rome, Forzani e C., printers of the Senate, 1883, 1884, 1885.

II. *Del Papato nei tre ultimi secoli. Compendio storico-critico.* By Mamiani Terenzio. Milan, Fratelli Trêves, publishers, 1885. Volume in-16, with pages xxxix, 326. (Posthumous work).

III. *Antonio Stoppani e la Civiltà Cattolica.* By Gr. B. Bulgarini. Genoa, Printing Office of the Royal Institute for the Deaf and Mute, 1885, in-16, pages 85.

IV. *Di una nuova accusa mossa da Sua Eminenza Reverendissima il Cardinal Zigliar» al sistema filosofico di Antonio Rosmini.* Genoa, Printing Office of the Royal Institute for the Deaf and Mute, 1885, in-16, pages 82.

V. *Vera Augusto*. All works, in whatever language: prohibited. Decree of December 22, 1876. The author commendably subjected himself to examination before his death and approved of this condemnation.

Therefore, no one, of whatever rank or condition, may dare to publish, print, read, or retain the aforementioned work, in any place and in any language, either now or in the future, but rather, they are bound to hand it over to the Ordinary of the place, or to Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books.

These matters, having been reported to me, the undersigned, a member of the Sacred Congregation of the Holy Office, His Holiness Pope Leo XIII approved the Decree and ordered it to be promulgated. In witness whereof, etc.

Given in Rome on September 7, 1885.

F. R. THOMAS M.” CARD. MARTINELLI, Prefect.

Fr. Hieronymus Pius Saccheri, Order of Preachers, Secretary of the Sacred Congregation of the Holy Office.

[Space for the Seal]

On September 12, 1885, I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City.

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Vincentius Benaglia, Magister Cursorum.

[*Latin ed. p. 161*]

161 ENCYCLICAL LETTER of the Most Holy Pope Leo XIII concerning the Christian Constitution of States. The immortal work of the merciful God, which is the Church, although by its very nature and essence it aims at the attainment of the salvation of souls and eternal happiness in heaven, nevertheless, even within the realm of mortal affairs, it brings forth so many and such great benefits that none could be greater, if it were not primarily and most importantly dedicated to preserving the prosperity of this life, which is lived on earth. Wherever the Church has established its influence, it has immediately transformed the face of things, and imbued the manners of the people with virtues previously unknown, as well as with a new and refined civility: and those peoples who have embraced it have excelled in gentleness, equity, and the glory of their deeds. — But that old and ancient reproach remains, that the Church is considered to be contrary to the interests of the state, and that it cannot contribute anything to those advantages or embellishments which every well-ordered state seeks by its own right and by its own will. In the very beginnings of the Church, we have learned that Christians were stirred by a similar injustice of opinion, and were accustomed to be called to hatred and envy, even for this reason, because their enemies called them traitors to the empire; at that time, the blame for the evils that afflicted the state was commonly attributed to the Christians, when in truth, the just punishment for the wicked was demanded by God. This atrocity of calumny did not arise without cause, and it sharpened the pen and inspired the genius of Augustine: who, above all, in his work "De Civitate Dei," so clearly demonstrated the power of Christian wisdom, and the connection it has with the state, that it seems as though he did not write for the Christians of his time, but rather, he achieved a lasting triumph over false accusations. — However, this fatal desire for similar complaints and accusations has not ceased, and many, indeed, have sought to find the principles of civil life from sources other than the doctrines approved by the Holy Catholic Church. Indeed, in these latter times, a new "law," as they call it, has begun to flourish and to dominate, which they claim is a kind of growth of the age itself, born of increasing freedom. — But whatever dangers many may perceive, it is clear that no principle has ever been found superior to that which spontaneously arises from the teachings of the Gospel, for the establishment and regulation of the state. — Therefore, matters of the greatest importance and of the utmost concern to Our Office...

[*Latin ed. p. 162*]

162 We believe that it is fitting for an apostolic letter to present new opinions concerning the republic, in conjunction with Christian doctrine: we

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trust that, as truth emerges, the causes of error and doubt will be removed, so that everyone may easily see those supreme precepts of living that they ought to follow and to which they ought to conform. It is not a matter of great importance to determine what form and appearance a state will have, when the republic is governed by Christian philosophy. — It is inherent in human nature to live in civil society, for the necessary means of life and the perfection of intellect and spirit cannot be attained in solitude, but are provided by God, so that mankind is born for association and congregation, both domestic and civil, which alone can provide complete sufficiency for life. Moreover, since no society can stand without someone presiding over all, effectively and with a similar impulse, urging each individual towards the common purpose, it is necessary for the civil community of men to have an authority by which it is governed: which, like society itself, originates from nature and therefore from God Himself. — From this it follows that public power is, in itself, only from God. For God alone is the true and supreme Lord of all things, to whom all things whatsoever must be subject and subservient: so that whoever has the right to command, does not obtain that right from any other source, except from that highest of all rulers, God. For all power comes from God (1). — However, the right to rule is not necessarily bound to any particular form of republic: it can rightly assume one form or another, provided that it truly promotes the common good and utility. But in every kind of republic, rulers must absolutely look to God as the governor of the world, and present Him to themselves as an example and a law in governing the state. For God, as in all things that are seen, has created secondary causes, in which some understanding of the divine action and nature may be perceived, and which contribute to that end to which this entire universe tends: thus, in civil society, He willed there to be a principality, so that those who govern it may represent a certain image of the divine power and divine providence in the human race. Therefore, government must be just, not tyrannical, but rather paternal, because God's power over men is the most just, and is joined with paternal goodness: and it must be exercised for the benefit of the citizens, because those who govern others do so for this one reason, namely, for the benefit of the state

(1) Romans XIII, 1.

[*Latin ed. p. 163*]

LETTERS 163: Civil authority, being established for the common good of all, must, in no way, be subjected to the interests of one or a few. But if those who govern are corrupted by unjust dominion, if they sin through arrogance and oppression, if they give bad counsel to the people, they must know that they will one day have to render an account to God for their actions, and this will be all the more severe, the more holy their office has been, or the higher the degree of dignity they have attained. The powerful shall suffer powerful torments (1).

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Thus, indeed, the majesty of the empire is pleasing to the citizens when it is treated with reverence and honesty. For once they have understood that those who govern possess authority given by God, they will feel that these are just and proper offices, and they will obey and show fidelity to these same rulers, with a certain resemblance to the piety that children owe to their parents. Every soul must be subject to higher powers (2).

Indeed, it is no more permissible to despise legitimate authority, whatever form it may take, than it is to resist the divine will; and those who resist it rush headlong to their ruin. He who resists the power of the state resists the ordinance of God; but those who resist receive condemnation upon themselves (3). Therefore, to reject obedience, and to incite the people to sedition through force, is a crime of the highest magnitude, not only against human authority, but also against God. It is clear that a state, being thus constituted, must, above all things, fulfill those many and most important duties that connect it to God, namely, public religion. Nature and reason, which command that each individual should worship God piously and religiously, insofar as it is within our power, and that we, having come from Him, should return to Him, bind the civil community by the same law. For men, being joined together in a common society, are no less under the power of God than individuals; nor does the society owe less grace to God, by whose authority it coalesced, by whose will it is preserved, and by whose beneficence it has received an innumerable abundance of goods. Therefore, just as it is not permissible for anyone to neglect their duties towards God, and their greatest duty is to embrace religion, both in mind and in deed, not according to their own preference, but according to what God commands, and what is certainly and without any doubt recognized as true among all things; so too, a state cannot, without guilt, act as if God did not exist at all, or to reject religion as something foreign and of no benefit, or to embrace any and all things indifferently according to its own whim.

(1) Sap. V, 1, 7.

(2) Rom. XIII, 1.

(3) Ibid. v. 2.

[*Latin ed. p. 164*]

164. Letters [of instruction] ought to prescribe a manner and measure by which to worship God, in the way that God Himself has demonstrated that He wishes to be worshipped. Therefore, it is necessary that among rulers, the name of God be held sacred; and that, in the principal duties of those rulers, religion be embraced with grace, defended with benevolence, protected with the authority of laws, and that nothing be instituted or decreed which is contrary to its safety. This is also what they owe to the citizens, over whom they preside. For all men are born and conceived for a certain highest and ultimate good, to which all deliberations must be referred, beyond

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this fragility and brevity of life, which is placed in the heavens. Since from this depends the complete and perfect happiness of all men, it is of such importance to pursue that which has been mentioned, that it cannot be of greater importance to any individual. Therefore, civil society, being born of common utility, it is necessary that rulers consult for the good of the citizens, in such a way that, by obtaining and acquiring that highest and unchangeable good which they spontaneously desire, they may not only never experience any harm, but may also afford every possible opportunity. The most important of these is that due reverence be given to the holy and inviolable worship of religion, to whose offices man is joined to God. But how to discern true religion is not difficult for one who applies a prudent and sincere judgment; for, by many and illustrious arguments, namely, by the truth of prophecies, the frequency of miracles, the rapid spread of faith, even through hostile means and great obstacles, the testimony of martyrs, and other similar things, it is evident that it is the only true religion, which Jesus Christ Himself instituted, and which He demanded be defended and propagated by His Church. For the only-begotten Son of God established a society on earth, which is called the Church, to which He entrusted the highest and divine mission of continuing it throughout all ages, which He received from the Father. "As the Father hath sent me, so I send you forth" (1). "Behold, I am with you all days, even unto the end of the world" (2). Therefore, just as Jesus Christ came into the world that men might have life, and have it more abundantly (3), so the Church has as its purpose, as its end, the eternal salvation of souls; and for this reason, its nature is such that it extends itself to the entire complex of the human race, not limited by any place or time. "Go ye, therefore, and teach all nations" (4). To so great a multitude of people, God Himself has appointed magistrates (1) John 20:21. (3) John 10:10. (2) Matthew 28:20. (4) Mark 16:15.

[*Latin ed. p. 165*]

LETTERS 165, who held authority: He wished that there should be one, the supreme, and the most certain teacher of truth, to whom the keys of the kingdom of heaven were entrusted. "To you I will give the keys of the kingdom of heaven" (1) — "Feed my sheep, feed my lambs" (2) — "I have prayed for you, that your faith may not fail" (3). This society, although composed of men, like a civil community, is nevertheless supernatural and spiritual, because of the end it has established for itself, and the means by which it strives to achieve that end; and therefore it is distinguished from and differs from a civil society; and, what is most important, it is a society that is perfect in its kind and by its right, possessing within itself and through itself all the means necessary for its own safety and action, by the will and beneficence of its Founder. Just as the end to which the Church tends is the most noble, so too is its power the most excellent, and no civil power can be inferior to it, nor can it be subject to it in any way. Truly, Jesus

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Christ gave His Apostles free commands in sacred matters, along with the power to interpret the true law, and also the twofold power that follows from this, to judge and to punish: "All power is given to me in heaven and on earth: Go therefore and teach all nations..." (4) — "...teaching them to observe all things whatsoever I have commanded you..." (4) — And elsewhere: "But if he will not hear the Church, then let him be to you as a heathen and a publican" (5). And again: "Having before you the power to avenge every disobedience" (6). Again: "I will judge according to my power which the Lord has given me for edification, and not for destruction" (7). Therefore, it is the Church, and not a civil entity, that must be the guide for men to the heavenly realm; and it is to this that God has assigned the task of overseeing all matters pertaining to religion, and of making judgments thereon; of teaching all nations; of extending the boundaries of the Christian name as far as possible; in short, of administering the Christian cause freely and equitably according to its own judgment. This authority, which is absolutely complete and entirely of its own right, and which has long been opposed by the philosophy of secular rulers, the Church has never ceased to assert and publicly exercise; the Apostles themselves, above all, were its champions, who, when forbidden by the rulers of the Synagogue to spread the Gospel, steadfastly replied that it is necessary to obey God rather than men (8). The holy Fathers of the Church have also, as opportunity allowed, striven to defend this same authority with the force of reason.

(1) Matthew 16:19.

(2) John 21:16-17.

(3) Luke 22:32.

(4) Matthew 28:18-19-20.

(5) Matthew 18:17.

(6) II Corinthians 10:6.

(7) Ibid. 13:10.

(8) Acts 5:29.

[*Latin ed. p. 166*]

166 Letters of commendation from the authorities never failed to defend the steadfastness of the soul against its detractors. Moreover, both in word and deed, the very princes and governors of public affairs have demonstrated this, having become accustomed to dealing with the Church as if with the supreme and legitimate authority, through negotiations, the sending and receiving of ambassadors, and the exchange of offices. — It should not, indeed, be considered as having happened without a singular divine providence that this very power, through civil authority, is protected as the best safeguard of its own liberty. Therefore, God has divided the administration of the human race between two powers, namely the

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ecclesiastical and the civil, the former being concerned with divine matters, the latter with human affairs. Each is supreme in its own sphere: each has certain, defined limits within which its actions are proper; thus, as it were, each is circumscribed within a sphere in which its actions are rightfully exercised. But since the authority of both extends to the same things, it could happen that a single matter, although treated differently by each, would nevertheless fall under the jurisdiction of both. Therefore, the most provident God, from whom both are derived, must have arranged the paths of both in a proper and orderly manner. For if this were not so, frequent contentions and disputes would arise; and it would not be uncommon for a man, as it were, to be held back on a double road, anxious about what he should do, when two authorities, neither of which can refuse to exercise its authority without dereliction of duty, issue conflicting commands. But it is most contrary to the wisdom and goodness of God to think that, even in physical things, which are of a far lower order, He has not reconciled the natural forces and causes with a moderate reason and with a certain wondrous harmony, so that none impede the others, but that all, together, may conveniently and perfectly contribute to the common good. — Therefore, there must be a certain ordered connection between the two powers, a connection which may not undeservedly be compared to the union by which the soul and body are joined in man. But how great this connection is, cannot be judged otherwise than by considering, as we have said, the nature of each, and by considering the excellence and nobility of their purposes; since the one is most closely concerned with the care of earthly things, while the other is concerned with heavenly and eternal goods. — Whatever (1) Romans 13, 1.

[*Latin ed. p. 167*]

167. Therefore, in human affairs, whatever is sacred, whatever pertains to the cultivation of souls and the worship of God, whether it is so by its very nature, or is understood to be so by reason of the purpose to which it is directed, all of this is within the power and authority of the Church; whereas, all other things, which pertain to the civil and political order, it is right that they be subject to civil authority, as Jesus Christ commanded: "Render therefore unto Caesar the things that are Caesar's, and unto God the things that are God's."

However, there are times when another means of concord is beneficial for peaceful freedom, namely, when both the rulers of a state and the Roman Pontiff agree on a particular matter. In such times, the Church demonstrates the highest degree of maternal piety, being accustomed to show only as much leniency and indulgence as is possible. An example of this is the Christian ordering of human society, which we have briefly touched upon, and which is not devised rashly or out of mere whim, but is based on the most fundamental and true principles, which are confirmed by nat-

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ural reason itself. Such an ordering of the state has nothing that could be considered either less worthy of the grandeur of rulers, or insufficiently decorous; rather, it is so far from diminishing the rights of majesty that it rather makes them more stable and august. Indeed, if considered more deeply, this ordering possesses a certain great perfection, which is lacking in other forms of government; and from it, excellent and varied benefits would certainly follow, if only each part maintained its proper place, and if each fulfilled integrally that to which it is appointed, its office and duty.

Truly, in that constitution of the state, which we mentioned earlier, there is a harmonious arrangement of divine and human elements: the safety and rights of citizens are defended by the protection of divine, natural, and human laws; the description of each office is wisely established, and its proper preservation is duly ensured. Each individual in this state knows that a certain laborious and arduous path lies before them, which, if followed safely, will lead them to enter the eternal city; and they are guided by leaders and assisted by helpers. Likewise, they understand that there are others who are given to them for their security, for their fortunes, and for other benefits that sustain this common life, whether to provide or to preserve.

The domestic society gains its strength from the sanctity of the marriage bond; the rights and duties between spouses are governed by justice and equity; the due honor is preserved for the woman; the authority of the husband is conformed to the authority of God; and it is tempered...

[*Latin ed. p. 168*]

168 Letters [LITTERAE] concern the authority of the fatherland, which is fitting for the dignity of the wife and children: indeed, the best care is provided for the children, their protection, their advantages, and their education. In matters of politics and civil life, laws are directed towards the common good, and are guided by truth and justice, not by the deceptive will and judgment of the crowd. The authority of rulers acquires a certain human holiness, and is contained so that it does not deviate from justice, nor transgress the limits of their power: the obedience of citizens is accompanied by honor and dignity, because it is not servitude from man to man, but obedience to the will of God, who governs through men. Having understood and believed this, it is understood that all these things pertain to justice: to fear the majesty of rulers, to submit constantly and faithfully to public authority, to do nothing seditiously, to preserve the sacred order of the state. Similarly, in social relationships, charity, kindness, and generosity are present: these are not divided into opposing sides, nor do the precepts conflict; the citizen is also a Christian: indeed, all the greatest goods, by which the Christian religion itself enriches the life of mortal men, are sought for the benefit of the community and society, so that it may be truly said that the state of the republic depends on the religion in which

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God is worshipped, and that there is much kinship and familiarity between the two. (1)

Augustine, as is his custom, wonderfully demonstrated the force of these goods in many places, especially where he calls the Catholic Church, saying: "You instruct boys like children, young men with strength, and old men with composure, according to the age of each, not only of the body, but also of the soul." "You subject women to their husbands, not for the purpose of satisfying lust, but for the purpose of procreation and for the sake of the family, with chaste and faithful obedience." "You subject husbands to their wives, not to indulge a weaker sex, but according to the laws of sincere love." "You subject children to their parents with a certain freedom, and you place parents over their children with a pious authority." "You join citizens to citizens, and nations to nations, and indeed, you join all men together, not only in society, but also in a certain brotherhood, by the memory of their first parents." "You teach kings to look out for the people, and you warn the people to submit to the kings." "You diligently teach to whom honor is due, to whom affection, to whom reverence, to whom fear, to whom consolation, to whom admonition, to whom warning, to whom discipline, to whom rebuke, and to whom punishment, showing how that not all things are for all, and how that charity is due to all, and how that injustice is due to no one." (2)

(1) Sacr. Imp. ad Cyrillum Alexand. et Episcopus Collect. Conc. metrop. - T. III. Cfr. Labbeum

(2) De moribus Eccl. cath., cap. XXX, n. 63.

[*Latin ed. p. 169*]

LETTERS 169, rebuking wise men and philosophers: "Those who say that the doctrine of Christ is harmful to the state, let them show what kind of army Christ commanded His soldiers to be; let them show what kind of governors, what kind of husbands, what kind of wives, what kind of parents, what kind of children, what kind of masters, what kind of servants, what kind of kings, what kind of judges, and finally, what kind of debtors and tax collectors the Christian doctrine commands them to be; and let them dare to say that such people are harmful to the state; nay, rather, let them not hesitate to confess that, if obeyed, it is a great benefit to the state."

There was a time when Christian philosophy governed states: a time when the power of Christian wisdom and that divine virtue had penetrated into laws, institutions, the customs of the people, into all orders and reasons of the state; when the religion instituted by Jesus Christ, in that which was fitting, was firmly established in the degree of dignity; when the grace of princes and legitimate magistrates flourished everywhere; when the priesthood and the empire were united by concord and the friendly exchange of offices. And in this way, the state, composed in this manner, bore fruits greater than any, whose memory endures and which flourished through

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countless deeds recorded in monuments that no enemy art can corrupt or obscure.

It is certainly due to religion that Christendom subdued the barbarian peoples, leading them from savagery to gentleness, from superstition to truth; that the incursions of the Mohammedans were repelled; that civil order preserved the principate, and accustomed itself to offer itself as a model and teacher to others in all things of human dignity; that the Germanic liberties and their many benefits were granted to the people; that many things were wisely instituted for the relief of suffering.

These same benefits would certainly have remained, if concord had remained between both powers; and greater things might have been expected, if greater obedience and perseverance had been given to the authority, the teaching, and the councils of the Church. For it is to be held as a law for all time, as Ivo of Chartres wrote to Pope Paschal II: "When the kingdom and the priesthood agree with each other, the world is well governed, and the Church flourishes and bears fruit. But when they disagree with each other, not only do small things fail to grow, but even great things miserably decline."

(1) Epistle CXXXVIII (or 5) to Marcellinus, chapter I, paragraph 15.

(2) Epistle CCXXXIII.

[*Latin ed. p. 170*]

70. But those pernicious and deplorable studies of new things, which were stirred up in the 14th century, when they first mingled with the Christian religion, soon, by a certain natural course, came to philosophy, and from philosophy to all orders of civil society. From this source, those more recent and unrestrained ideas of liberty are drawn, namely, those which were devised in the greatest disturbances of the preceding century, and which, as principles and foundations of a new law, differ not only from the Christian law, but also from natural law itself. — The greatest of these principles is that all men, being alike in nature and origin, are truly equal in their actions: that each one is so much his own master that he is in no way subject to the authority of another: that he may freely think about whatever he wishes, and do whatever he pleases; that no one has the right to command others. With these principles guiding society and government, the state is nothing more than the will of the people, who, since they are solely in their own power, command themselves alone: and they choose those to whom they commit themselves, but in such a way that they transfer the right of government not as a right, but as a duty, to be exercised in their name. Divine dominion lies dormant, as if either God did not exist, or did not care for the society of the human race, or that men, whether individually or collectively, owed nothing to God, or that any kind of government could be conceived, the cause, power, and authority of which do not reside entirely in God Himself. Thus, as is evident, the republic is nothing other

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than a multitude that governs and directs itself: and since the people are said to contain within themselves the source of all rights and all power, it follows that the state does not consider itself obligated by any duty to God to publicly profess any religion; nor should it seek out the one true religion from among many, nor should it favor one above the others, but should grant equal rights to all religions, for the purpose of ensuring that the discipline of the state suffers no harm from them. It will be necessary to allow the judgment of each individual to determine all matters of religion; it will be permissible for each one to follow the religion he prefers, or to follow none at all, if he does not approve of any. From this, therefore, arise the judgments of each individual's conscience; the most abundant opinions about the worship of God, and about not worshipping Him; and infinite freedom of thought, and of publishing what has been thought. With these principles, which are most highly praised at this time, as the foundations of the state, it is easily seen into what place the Church is driven. For when, with such doctrines,

[*Latin ed. p. 171*]

LETTER 171: The actions of civil authorities are often such that they are not in harmony with the Catholic name, and to a society that claims to be Catholic, a place of inferior status is assigned within the state: the ecclesiastical laws are disregarded. The Church, which, by the command and mandate of Jesus Christ, ought to teach all nations, is forbidden to interfere with the public institutions of the people.

Concerning these very matters which are subject to mixed jurisdiction, the civil authorities, by their own judgment in civil affairs, rule, and in this way they contemptuously disregard the most sacred laws of the Church. They bring the marriages of Christians under their jurisdiction, deciding even concerning the marital bond, concerning unity, concerning the stability of the marriage. They interfere with the possessions of clerics, denying that their property can rightfully belong to the Church. In short, they treat the Church as if it were merely another type of society, disregarding its perfection and its rights, and similar to all other communities contained within the republic. And for this reason, they claim that if the Church possesses any rights, if it possesses any property for legitimate action, it does so only by the concession and beneficence of the princes of the state.

If, however, the Church holds any right within the republic, and this right is confirmed by the very civil laws, and if a certain agreement has been publicly made between the two powers, they clamor that the reasons of the Church must be separated from the reasons of the republic; and this is done with the intention that it may be permissible to act against the intervening faith without impunity, and that all things may be subject to their will, free from all obstacles.

This, however, is something that the Church cannot patiently endure, for

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it cannot abandon its most sacred and important duties, and it absolutely demands that the faith entrusted to it be fulfilled faithfully and religiously. Therefore, conflicts often arise between the spiritual and civil powers, and the outcome of these conflicts is usually that one, as the weaker in human resources, must yield to the other, the stronger. Thus, in this state of affairs of the republic, which is now desired by many, it is the custom and the will to either completely eliminate the Church, or to hold it bound and restricted by the power of the state. These actions are often undertaken with the intention of achieving a great deal. Laws, the administration of the state, the secular education of youth, the spoliation or destruction of religious orders, the subversion of the civil authority of the Roman Pontiffs – all of these things are aimed at weakening the Christian institutions, at restricting the freedom of the Catholic Church, and at threatening other rights. Such opinions concerning the governance of the state are, in fact, strongly contradicted by natural reason, and are very far from the truth.

For whatever power there is, it proceeds from God, the most excellent and august source, as nature itself testifies. But the popular government, which,

[*Latin ed. p. 172*]

172 Letters, considered in themselves, are said to possess a natural abundance, if they are highly effective in pleasing and inflaming the desires of many, and if they do not rely on any sound reasoning, nor are they capable of ensuring public safety and the constant stability of order. Indeed, these doctrines have gone so far that many consider them to be a law in civil prudence, allowing seditions to be justly instigated. It is believed that rulers are no more important than certain chosen individuals who carry out the will of the people; consequently, everything must necessarily be changeable according to the will of the people, and there is always some fear of disturbances. Regarding religion, to think that there is no difference between disparate and contradictory forms is to clearly lead to a refusal to judge anything by reason or by practice. But this is no different in reality from atheism, even if it differs in name. For those to whom God is believed to exist, it is necessarily understood that if they wish to maintain their belief, they must recognize that the reasons used in divine worship, which differ so greatly and have such significant differences and conflicts, cannot all be equally probable, equally good, and equally pleasing to God. Thus, the ability to think and express anything through literary forms, without any moderation, is not a good thing in itself, which human society should rightly rejoice in; but rather, it is the source and origin of many evils.

Liberty, as a virtue that perfects man, must be exercised in that which is true and that which is good; but the reason for good and true things cannot be changed at the whim of man, but remains always the same, and is no less immutable than the nature of things themselves. If the mind assents to false

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opinions, if evil will is present and applied to them, it does not achieve its own perfection, but both fall into corruption and decline in natural dignity. Therefore, whatever is contrary to virtue and truth, it is not right to place before the eyes of men, let alone to defend it with laws or the protection of Tulle. The only path to a blessed life, to which we all aspire, is through good works; therefore, a state deviates from the rule and prescription of nature if it allows license, false opinions, and evil deeds to flourish to such an extent that it is permissible to lead minds away from truth and hearts away from virtue without punishment.

Furthermore, to exclude the Church, which God himself established, from the actions of life, from laws, from the education of youth, and from domestic society, is a great and pernicious error. A state cannot be well-ordered without religion; and it is now perhaps more widely known than it should be, what kind of thing it is and what it leads to, this [philosophy] concerning life and morals.

[*Latin ed. p. 173*]

LETTER 173: Philosophy, which they call civil law, is the true mistress of virtue and the guardian of morals for the Church of Christ. It is that which protects the foundations, from which duties are derived, and, for the most effective pursuit of a virtuous life, it commands not only to avoid evil deeds, but also to restrain the movements of the mind that are contrary to reason, even without effect. — To wish that the Church should be subject to civil authority in the exercise of its offices is a great injustice, and a great rashness. This disrupts order, because what is natural is presented to those things which are above nature: the frequency of good deeds, which, if nothing hindered them, the Church would fulfill for the common good, is either taken away or greatly diminished; moreover, the way to enmities and conflicts is paved, which, as experience has too often demonstrated, bring great harm to both the state and the Church. Our predecessors, the Roman Pontiffs, understanding fully what the apostolic office demanded of them, never hesitated to condemn such doctrines. Thus, Gregory XVI, through Encyclical Letters dated August 15, 1832, struck down with great gravity of judgment those very opinions that were already being spread, namely, that nothing should be preferred in divine worship; that it should be up to each individual to judge about religion; that each person should have only his own conscience as judge; and that, furthermore, it should be permissible for everyone to express what they have felt, and also to introduce new things in the state. Regarding the distinction between sacred things and civil things, the same Pontiff wrote: "We cannot foresee anything more pleasing to both religion and the state than from those who desire to separate the Church from the kingdom, and to tear away the mutual concord of power and the priesthood. For it is clear that those who are afraid of the most impudent lovers of liberty, fear that very bond which has always

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been favorable and salutary to both the sacred and the civil order." — In a similar manner, Pius IX, as opportunity presented itself, noted several false opinions that were beginning to gain strength, and later ordered them to be gathered together, so that Catholics, in such a confluence of errors, might have something to follow without offense (1).

(1) It suffices to indicate some of these:

Prop. XIX: The Church is not a true republic, nor does it possess the same rights to exercise freedom.

Prop. XXXIX: The state, as the origin and source of all rights, and as a perfectly complete society, possesses its own proper and constant rights, which it possesses by divine right, without any prescribed limits, but civil authority is defined by its own limits.

[*Latin ed. p. 174*]

174. From these prescriptions of the Pontiffs, it must be wholly understood that the origin of public power comes from God Himself, and not from the multitude; that license for sedition must be opposed by reason; that the duties of religion must be considered in no place, nor in any way, to be secondary; and that it is both impious for private individuals and for states to act otherwise. Furthermore, it is not within the rights of citizens, nor in any matter worthy of grace and patronage, to place unrestrained power to feel and openly proclaim sentiments.

Similarly, it must be understood that the Church is a society, just as much as the state itself, both in nature and in law; and that those who hold the highest authority must not compel or allow the Church to serve or be subject to them, nor must they allow it less freedom in carrying out its affairs, nor must they diminish any of the rights which have been conferred upon it by Jesus Christ.

In matters of mixed jurisdiction, it is most in accordance with nature and with God's designs not a separation of one power from another, much less contention, but rather complete harmony, and one that is consistent with the proximate causes which gave rise to both societies. These are the things which are prescribed by the Catholic Church concerning the establishment and regulation of states.

However, if these statements and decrees are to be judged correctly, nothing in them is inherently objectionable regarding the various forms of the republic, since they contain nothing that contradicts Catholic doctrine, and they can, if wisely and justly applied, serve to maintain the state in the best possible condition.

Indeed, it is not inherently objectionable if the people have more or less participation in the republic; for this itself, at certain times and under certain laws, can pertain not only to the advantage, but also to the duty of citizens.

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Furthermore, there is no just cause for anyone to accuse the Church, or to claim that it is too lenient or too restrictive, or that it is hostile to the freedom of those things which are genuine and legitimate.

Truly, if the Church judges that the various forms of worship are not to be considered equal to the true religion, it does not therefore condemn those who govern the state, if, for the sake of some great good or to prevent some great evil, they patiently tolerate certain practices and customs, so that they may have their place in the state.

And also, Proposition 55: "The Church must be separated from the State, and the State from the Church," is false. Furthermore, it is false to claim that openly and publicly manifesting any opinions will lead to the corruption of the morals and minds of the people, and to the undermining of the freedom of each form of worship, and to the propagation of indifference, which attributes full power to everyone.

[*Latin ed. p. 175*]

LETTERS 175. The Church is accustomed greatly to caution against this: that no one should be compelled against his will to embrace the Catholic faith, because, as Augustine wisely observes, a man cannot believe unless he wills it (1). Similarly, the Church cannot approve of that freedom which breeds contempt for the most holy laws of God, and which deprives legitimate authority of due obedience. For license is truer than freedom; and rightly, Augustine calls freedom the "freedom of perdition" (2), and the Apostle Peter calls it "a covering for malice" (3): nay, when it is beyond reason, it is true servitude; for he who commits sin is the slave of sin (4). In contrast, there is a freedom that is desirable and to be sought after, which, if considered privately, does not allow a man to serve errors and lusts, terrible masters; but if considered publicly, it wisely governs citizens, generously bestowing the means of increasing their well-being, and defends the common good from the interference of others. But this honorable and humanly worthy freedom, the Church approves above all others, and she has never ceased to strive and contend to maintain it firm and intact in the people. Indeed, those things which can most contribute to the common good in a state; those which are usefully instituted against the license of princes who give bad counsel to the people; those which prevent the supreme state from unduly encroaching upon the municipal or domestic affairs; those which are effective in preserving decency, the dignity of the human person, and the equality of law in all citizens – the monuments of past ages testify that the Catholic Church has always been the mother, the patroness, or the guardian of all these things. Therefore, constantly consenting to this, if, on the one hand, it rejects that immoderate freedom, which leads both individuals and peoples into license or servitude, on the other hand, it willingly and gladly embraces the better things that each day brings, if they truly contribute to the well-being of this life, which is, as it were, a striving

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towards another, and to remain perpetually in that state. Therefore, what is said, that the Church envies the modern state in its discipline, and that it rejects all that the ingenuity of these times has produced, is a vain and empty calumny. Indeed, it rejects the madness of opinions; it disapproves of the nefarious designs of sedition; and it condemns that state of mind in which the beginnings of voluntary departure from God are perceived; but because everything that is true must necessarily proceed from God, the Church recognizes whatever is discovered through inquiry as a certain trace of the divine mind. And since there is nothing in the nature of truth that is not in accordance with doctrines (1) *Tract. XXVI in Ioan., n. 2.* (3) *1 Peter I, 16.* (2) *Ep. CV ad donatistas c. I I, n. 9.* (4) *John VIII, 34.*

[*Latin ed. p. 176*]

176 Letters, having been handed down by divine authority, abolish faith, many things abolish faith, and everything can impel to a true discovery concerning God, either for knowing Him or for praising Him; therefore, whatever is added to the pursuits of the sciences, the Church, rejoicing and pleased, will always welcome: and, as is her custom, she will diligently foster and promote these studies as well, which are placed in the explanation of nature. In these studies, the Church does not oppose if the mind discovers something new; she does not hinder the seeking of more things for the honor, convenience, and good of life; on the contrary, being an enemy of idleness and apathy, she greatly desires that human talents bear fruit through exercise and cultivation; she offers encouragement for every kind of art and work; and she strives to direct all these pursuits towards honesty, salvation, and virtue, lest they deflect human intelligence and industry away from God and heavenly things. But these things, although full of reason and prudence, are less pleasing at this time, when states not only refuse to conform to the form of Christian wisdom, but also seem to desire to move further away from it every day. — Nevertheless, because truth, when brought to light, usually flows freely and gradually pervades the minds of men, therefore, moved by the consciousness of the greatest and most sacred duty, namely, the Apostolic office which we exercise towards all nations, we freely speak out what is true, as we ought: not because we are unaware of the circumstances of the times, or because we consider the honorable and useful advancements of our age to be to be rejected, but because we desire safer paths and firmer foundations for the public good; and this, with the preservation of the people's inherent freedom; for in men, truth is the best mother and guardian of freedom: "the truth shall make you free." (1) Therefore, in this difficult course of affairs, Catholic people, if they have heard us, as is fitting, will easily see what are their duties, both in opinions and in actions. — And in matters of opinion, whatever the Roman Pontiffs have taught or will teach, it is necessary to hold each thing with a firm judgment and understanding, and to openly profess it, whenever

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the occasion demands. And especially concerning those things which are called "liberties" that have been sought in recent times, the Apostolic See must stand firm in its judgment, and each individual must think as the See itself thinks. Care must be taken that the honorable appearance of these things does not deceive anyone; and consideration must be given to their origins, and by what means they are widely supported and maintained. Sufficient. (1) John 8:32.

[*Latin ed. p. 177*]

LETTER 177. It is now known through experience which of these things are effective in the state: for they have everywhere produced fruits, of which good and wise men rightly lament. If such a state, either truly or by pretense, bears the Christian name, and acts impiously and tyrannically, then, when compared with the kind of republic of which we are speaking, it may seem more tolerable. However, the principles upon which it is founded are certainly of such a nature, as we have said before, that they need not be proven by anyone. It can operate either in private and domestic affairs, or in public life.

In private life, the first duty is to conform one's life and manners most diligently to the precepts of the Gospel, and not to refuse, if Christian virtue demands it, to endure and tolerate things that are somewhat more difficult. Furthermore, each individual should love the Church as a common mother, and should obey her laws, serve her with honor, and defend her rights, and should strive that those in whose authority one finds oneself should be treated and loved with equal piety.

It is also of interest to public welfare to contribute wisely to the administration of public affairs, and to strive above all to ensure that young people are instructed in religion and in virtuous morals in a manner that is fitting for Christians. Much depends on these things for the salvation of individuals and of states. Moreover, it is generally useful and honorable for Catholic citizens to extend their efforts from this narrower field to encompass the entire republic. We say "generally" because these precepts of ours apply to all nations. However, it may sometimes happen that, for the most just reasons, a republic may be involved in political affairs, and that it may not be expedient. But generally, as we have said, it is more blameworthy to refuse to participate in public affairs than to contribute nothing to the common good, or to exert no effort; especially since Catholic citizens are, by the very admonition of doctrine that they profess, encouraged to act honestly and according to faith. On the contrary, those whose opinions offer little hope of salvation are easily led astray. And this would also be to the detriment of the Christian name, because those who are badly disposed towards the Church could gain much, while those who are well-disposed would gain little. Therefore, it is clear that there is a just reason for Catholics to engage in public affairs: for they do not, nor should they, engage in them

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for the purpose of proving that what is happening in public affairs is not honorable at this time; but rather, to correct these very affairs, as far as possible.

[*Latin ed. p. 178*]

178 Letters can, for the good of the public, convey the sincere and true, with the intention of instilling the wisdom and virtue of the Catholic religion, like the most wholesome juice and blood, into all the veins of the republic. — Thus it was in the early ages of the Church. The morals and studies of the pagans were so far removed from the studies and morals of the Gospel: yet Christians were always seen, amidst the prevailing superstition, to be incorrupt and ever true to themselves, and, whenever possible, to spread their faith. The faithful, by their example, obedience, and, insofar as it was lawful, submission to the laws, radiated a wondrous splendor of sanctity, always striving to help their brethren, to call others to the wisdom of Christ, but always ready to yield and to die bravely, if it were necessary to preserve their virtue, lest they should be seen to compromise. In this way, Christian institutions quickly spread, not only into private homes, but into camps, into the court, and even into the royal palace. "Yesterday, we have filled all things, cities, islands, castles, municipalities, assemblies, camps themselves, tribes, legions, palaces, the senate, the forum," so that when it was permitted by law to publicly profess the Christian faith, it appeared, not wandering in cradles, but mature and already quite firm in a large part of the civilized world. Indeed, it is fitting for these times that these examples be renewed. — Catholics, as far as they are worthy of that name, must above all else be and wish to be the most devoted sons of the Church; those who cannot be consistent with this devotion must be rejected without hesitation; they must strive, as honorably as possible, to use the institutions of the people to defend the truth and justice; they must work to ensure that the freedom of action does not exceed the bounds established by the law of nature and of God; they must strive to ensure that the entire republic is transformed into that Christian likeness and form that we have mentioned. — The method for achieving these things cannot be conveniently established in a single, certain way, since it must be adapted to the specific places and times, which are very different from each other. Nevertheless, the harmony of intentions must be preserved, and the similarity of actions sought. And both can be best achieved if each person considers the prescriptions of the Apostolic See to be the law of life, and if they obey the Bishops, whom the Holy Spirit has appointed to govern the Church of God. — The defense of the Catholic name necessarily requires that there be unity among all in proclaiming the doctrines that are handed down by

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the Church.

[*Latin ed. p. 179*]

LETTERS 179: With diligence, and with the utmost constancy, and in this regard, it must be ensured that no one connives at false opinions, or resists them with less firmness than truth permits. Regarding matters that are open to opinion, it is permissible to investigate the truth with moderation and study, but always far removed from injurious suspicions and mutual accusations.

Furthermore, so that the bond of minds is not torn apart by rash accusations, let all understand this: the integrity of the Catholic profession cannot in any way be compatible with opinions that tend towards naturalism or rationalism, the ultimate goal of which is to completely abolish Christian institutions and to establish the dominion of man in society, setting God aside.

Likewise, it is not permissible to follow one form of office privately, and another publicly, so to speak, in such a way that the authority of the Church is observed in private life, but scorned in public affairs. For this would be to join the honorable and the dishonorable together, and to make a man contend with himself, whereas he ought always to be consistent with himself, and to fail in no matter, nor in any aspect of life, from Christian virtue. However, if we inquire about purely political reasons, about the best form of government, about the ordering of states in one way or another, then, of course, honest disagreement is possible in these matters. Therefore, those whose piety is known, and who are prepared to receive the decrees of the Apostolic See with obedience, cannot, without injustice, have a dissenting opinion on the matters we have discussed; and it is a much greater injustice if suspicions of a violated and false Catholic faith are brought forward, which we have unfortunately witnessed more than once.

Moreover, this rule must be observed by those who often commit their thoughts to writing, especially the authors of periodicals. In this matter, concerning the greatest things, there should be no room for "internal agreements" or the pursuit of factions, but all must strive with united minds and purposes, which is to preserve the religion and the public good. If, therefore, there has been any disagreement previously, it must be suppressed by a voluntary forgetting; if anything has been done rashly, if anything unjustly, then, whatever the fault may be, it must be compensated for by mutual charity, and especially by a supreme obedience to the Apostolic See.

By this path, Catholics will achieve two most excellent things: first, to offer themselves as helpers to the Church in preserving and propagating Christian wisdom; second, to benefit civil society greatly, whose safety is greatly endangered, due to the greed for doctrines and desires. These

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things, Venerable Brothers, we have stated for all.

[*Latin ed. p. 180*]

180 We communicate to the nations of the Catholic world concerning the constitution of Christian states, and the duties of individual citizens. Moreover, it is necessary to implore the heavenly protection with the utmost prayers, and to pray to God, that these things, which we desire and strive for for the glory of Himself and the common salvation of the human race, may be brought to the desired outcome by Him alone, Whose it is to enlighten the minds of men, and to move their wills. Under the auspices of divine benefits, and as a witness of Our paternal benevolence, We impart to you, Venerable Brothers, and to the entire clergy and people entrusted to your faith and vigilance, Our Apostolic Blessing in the Lord, with all our heart. Given at Rome, near St. Peter, on the 1st of November, in the year 1889, in the eighth year of Our Pontificate. LEO XIII, Pope.

[*Latin ed. p. 181*]

181 FROM S., CONGREGATION! COUNCIL! – concerning the deprivation. Catechism, Council of Trent, Session 13, chapter 4; Session 21, chapter 6. Concerning Reform. SUMMARY OF FACTS. The parish priest of the town of Tremonsuolo, from the time that he began to govern the Church, was subjected to numerous disturbances and accusations. To remain silent about the others, it is evident from the records that, on September 30, 1859, several people attacked him, tearing apart his house and striking him. Barely escaping from their hands, he took refuge with the Neapolitan soldiers, who were then stationed near Caietani for the purpose of war, in order to save his life. There, he was thrown into chains, and subsequently released through the efforts of the Archbishop, and again subjected to judgment by certain upright men. He was accused of improper conduct with a certain Mary, of disturbing the sacrament of confession, and of being denounced as a supporter of the rebellion against King Francis II, thereby disturbing the town and its families. However, after a time, when civil government was somewhat changed in those places, this prosecution did not proceed; but under a new regime, the same sad proceedings were discovered. Since the accusations and complaints did not cease, the parish priest at that time suffered much from both civil and ecclesiastical authority; so that the Syndic and the Minister of State for religious affairs wrote to the Archbishop, calling his attention to the life and work of that parish priest; indeed, the Minister of State stated that he had been compelled to remove this parish priest from his position, both because of his bad morals, and in order to ensure the safety of his life.

[*Latin ed. p. 182*]

182 In Caietana, and indeed on October 20th, the civil official, commonly known as the Intendente of the district of Caietana, informed the Arch-

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bishop that the parish priest had been apprehended and was being held in the convent of the Fathers [of the] Reformed Order, located in Traetto. Subsequently, the Ordinary first appointed an administrator for the parish, and then he insisted with the civil authorities that the parish priest be released and that, until new arrangements were made, he be assigned to the suburb of Caietae; which was granted. However, instead of peace, at least for a time, being hoped for, a new occasion for dispute arose. For the parish priest refused to provide the house and the necessary support, according to the administrator's wishes. Meanwhile, the parish priest was brought to justice before the Royal Tribunal of S. Maria Capua Vetere, where he was accused of several crimes, namely theft, attempted homicide, procuring witnesses, and also of opposition to public order, and for this last crime alone he was condemned, being fined a month's imprisonment, but in the other charges he was acquitted. However, the condition of the parish was deteriorating: no one wanted to permanently fulfill the duties of administrator, because the parish priest was unwilling to provide anyone with sustenance, lodging in the parochial house, and to cover the expenses of the services, at least as was demanded. In the year 1872, the parish priest was permitted to return to his church, but he was not granted free administration of the goods: but again, the same complaints began to be renewed, and on top of all this, the parish priest, afflicted with a weakness of sight, was increasingly unable to perform his duties. When a petition from the inhabitants against the parish priest was presented to the current Ordinary, the Archbishop warned the parish priest not to celebrate Mass, suspended him from the administration of the parish, because he was unable to administer the sacraments being afflicted with eye trouble, and appointed the priest Merola as provisional administrator. So agitated was the parish priest by this decree, that he went to the civil court of the praetor. Later, however, having returned to a better frame of mind, he sent a messenger to explain the situation.

[*Latin ed. p. 183*]

CAIETAN A 183. Then, he began incessantly to attack the steward, whom he regarded with a most unfavorable disposition; and he accused him, as inept, successively to the Archbishop, to the Supreme Pontiff, and to the Sacred Congregation of the Council, not once, but repeatedly. Meanwhile, the condition of the parish deteriorated daily; the people complained, and the vice-syndic of that town repeatedly appealed to the Archbishop and to the syndic of Minturno, concerning the neglected care of souls, against the steward and against the parish priest. Finally, a certain William Coraccio, son of Mary, on January 8, 1883, formally presented an accusation against the parish priest, from which a legal process was initiated. More things were then brought against him; and he protested against each witness, often as a suspect, and especially against

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the curia itself, and particularly against the vicarius general, who had been chosen as the judge in this case, whom he declared to be an enemy; and he even appealed to the Holy See concerning these matters. However, the Sacred Congregation of the Council, after hearing the Ordinary, to whom it had already granted the power to proceed, even in a summary form, to the deposition of the parish priest, replied to him: "Notwithstanding the parish priest's protestation, let the Archbishop proceed to further steps until the issuance of a sentence." This sentence was indeed given on May 21, 1884, in the following terms: "Considering, etc., having justice and charity before our eyes, we judge and declare that the Reverend parish priest be given a period of two months, calculated from the date of notification of this sentence, in which to resign his pastoral office and benefice... and that, should he, by resisting this sentence, not resign his pastoral office and benefice as aforesaid within the aforementioned two months, he shall be legally removed and deprived of the aforementioned pastoral office and benefice, as we now judicially and definitively remove and declare him to be." Synopsis of the Dispute. The accuser stated that, from the beginning of his pastoral office, the parish priest had incurred the hatred and envy of the families of Merola and Coraccio, from whom the PARISH PRIEST WAS THE DEFENDER OF ALL GOODS.

[*Latin ed. p. 184*]

184 In Gaeta, the matter must be revisited. Remembering then the patron, who recounts the infirmity of the eyes that afflicted the unfortunate parish priest, and his absence from the parish, he declares that the causes for treating this illness should be considered rather than those of crimes. However, when the parish priest returned to his church, although suffering from his eyes and assisted by an economist, he did not cease to be a parish priest. In the year 1876, with a new prelate elected to the see of Gaeta, things began to proceed differently. Since this new prelate was connected by bonds of friendship with the Merola family, and in particular with the priest Salvatore Merola, and incited by them, he issued a decree against the suffering and unfortunate curate, by which the priest Merola was assigned the care of the parish. The new economist, emboldened by such friendship, began to abuse his position and office. He was accustomed to leaving at dawn to go to the countryside, to a place two thousand paces distant, and would not return to the village of Tremonsuoli until late at night. Consequently, many had to die without the sacraments. Furthermore, the economist was not known to be knowledgeable in explaining the word of God, and, what is more serious, he was not equipped with the faculty to hear confessions. Therefore, the faithful could never hear an explanation of the Gospel, nor could they ever receive the sacrament of penance from this economist. Moreover, his life was by no means honest, since he kept a certain woman in the countryside with him, about whom there is no good

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reputation. The Curia, of course, excuses itself for the appointment of this economist, stating that no other priest could be found who would accept living in Tremonsuoli along with the parish priest, which is false: for many would gladly undertake this duty. Moved by all these things, the parish priest brought the matter to the Holy See for a remedy, and indeed, he insisted with the Curia that the economist Merola be removed. But from that time on, a plot began to be hatched for a more favorable outcome, in which the parish priest would be forced to relinquish the parish. Since a process against the parish priest for deprivation of the benefice was to be opened, a certain William was sent to the Curia as accuser, who, having been brought to Gaeta in a closed carriage, accused his own mother, Mary, as if...

[*Latin ed. p. 185*]

GAETA 185: The parish priest was compelled, by acts and threats, to dismiss his housekeeper and a member of his family who were to testify. The proceedings were instituted in such a way that the assigned judge was the vicarius generalis Ferrare, who harbors a hostile sentiment towards the parish priest, and who, therefore, according to the defender, should be considered a suspect judge. Similar things are true of the witnesses; some are declared to be suspect, others as enemies, and most are said to be to be rejected, because either they contradicted themselves in different interrogations, or because they are considered infamous and unworthy of any credence, or because they are servants of the Merola family, either on land or at sea, and were sent by them to testify against the parish priest; and therefore, as being related to that person who is an enemy of the parish priest, they are also considered suspect. The defender then objected to the manner in which the proceedings were conducted. Since, from the beginning, the acts and depositions were lying without an index, without page numbering, and the sheets were not bound together. He also alleges that certain documents from syndics and other authorities favorable to him, presented to the court, were secretly taken from the proceedings, that some witnesses whom he had requested to be examined were either rejected by the court before they could be heard, or were frightened away by Merola's steward, preventing them from approaching the court, and finally, that some witnesses whom he had requested to be questioned according to formulas provided by himself, were not questioned at all. And, on top of all this, all the witnesses were heard in the absence of the defendant. Nevertheless, despite so much power being arrayed against the parish priest, the defender states that not a few, and not of insignificant standing, were found who did not refuse to testify in favor of the parish priest. And with these preliminary statements made, the defender proceeds to argue the nullity of the proceedings. And in this section, he notes first that the judge who was appointed to conduct the proceedings was the very same one

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who rendered the judgment; and that this is contrary to the practice of both forums; and that this was especially to be avoided, since this judge, namely the vicarius generalis, had been declared suspect. Furthermore, it is established that all the witnesses were heard in the absence of the defendant.

[*Latin ed. p. 186*]

186 In Gaeta, and its defender, and never repeated, as much as the parish priest vehemently protested. Hence, the nullity of the proceedings, according to Rotunda, decision 581, number 9, cor. Penia, the aforementioned defender affirms. Indeed, it is true that at the end of the process, the defender was admitted to hear certain witnesses; but at that time, it made little difference whether the defender was present or not, since there were already ample and abundant testimonies against the accused in the court. This, however, could only have been done unjustly and to the detriment of the accused. Therefore, here is a case for admitting a new hearing of witnesses, even though the process is already closed, as expressly stated in the text in chapter 48 of Extravagantes de Servitiis. – ibid. – "We shall not say that he is not to be heard further on this matter, unless perhaps he had, from the beginning, been questioned on certain articles, and this had been maliciously or negligently overlooked." And the Doctors, ibid. Furthermore, the testimonies to the witnesses were not directed by the court's official, but by Salvatore Merola, for whom it was of the greatest importance to select and prepare witnesses hostile to the parish priest. But another fault is apparent: since the matter concerned the deprivation of a benefice on the grounds primarily of concubinage, a threefold warning, as expressly stated in session 25, chapter 14, concerning reforms, and the Doctors, should have been given beforehand. However, the orator claims that no such warnings were given. And if such warnings were said to have been given privately to the parish priest, for example, by the monk Aurelius from San Donato and others, then the same orator responds, citing Vermiglioli, Causes of Crime, 122, number 6 – ibid. – "Nor does it matter if D. Michael had been thrice persuaded by the parish priest to abandon his relationship with Margaret. For from such persuasions, it cannot be said that the council was satisfied, as if it required an explicit canonical warning from a superior." It is futile for the court to excuse itself for the omitted warning, or to appeal to a summary process, or to claim that it wished to avoid the appearance of persecution against the poor parish priest, who was in distress. Finally, the court also erred in not observing...

[*Latin ed. p. 187*]

Gaeta, 187, cites the gradation of penalties prescribed by the same Council of Trent, cited above, and repeats it in De Luca, *De Beneficiis*, Disputation 75, number 10: "Furthermore, there was a clear defect in the form pre-

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scribed by the same Holy Council of Trent, namely, that, in order to proceed from the offense of concubinage to deprivation [of office], it must be done with a threefold warning, accompanied by a threefold gradual punishment: first, by the deprivation of one-third of the fruits [of the benefice]; second, by the complete deprivation of all fruits and administration; and third, by the deprivation of the benefice itself." However, the parish priest was immediately deprived of the benefice. The advocate, proceeding to weigh the crimes for which the parish priest is accused, recounts them individually, as follows: "For improper conduct with Mary P., then with Mary O., and now with Mary G." But, the advocate notes, with regard to the first two women, we must go back 20 years or more. Furthermore, according to L. 29, § 5 ff., concerning the Julian law on adultery, it is established "that a crime cannot be raised after it has been dormant for five years." And the Doctors [of Canon Law] state this extensively; but especially Gregory XVI, in an edict of September 20, 1832, cautioned against this in articles 42 and 43. However, the advocate adds, these points are made merely for the sake of abundance, because, concerning the offense with the third woman, it is not legally established. For no witness was brought forward who saw [the offense]; but even those who testified against him, the Merola family, were unable to offer anything other than this: "It is said, it is rumored, and similar expressions." Furthermore, from rumor [as the Rota decrees in decision 581, number 3, before the Penitentiary, it does not constitute legitimate proof, especially when the witnesses who testify about the rumor do not know from whom they heard the voices; and it may be derived from the malice of someone, according to the aforementioned Rota decision, number 5]. Moreover, several other witnesses testified in favor of the parish priest, contradicting the previous ones, and confessed that they knew nothing, had heard nothing, thereby completely undermining the authority of the former, as the same Rota states in number 11; and this is all the more important when the accused should be favored in cases of doubt. Finally, it must also be considered that, in order to exclude the witnesses against him, another fact must be taken into account, namely, that several of them contradicted each other outside of court.

[*Latin ed. p. 188*]

188 In Gaeta, some individuals claimed that depositions against the parish priest had been imposed upon them by the Merola family; others reported that a deposition, presented to them as their own, had been fabricated and presented in the court, which they themselves had not known. Regarding blasphemies, the advocate notes that the parish priest was sometimes heard to exclaim, using the name of God or holy names, but that the improper use of the divine name does not constitute blasphemy. Concerning scandal, he states that if it exists, it was pharisaical, and therefore should not be given any consideration. The hatred of the people

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and the contempt shown to the parish priest are the most false accusations; and there are many witnesses who testify that the parish priest is hated. However, the hatred of the common people is not a canonical cause for removing a parish priest, unless "the people's obstinacy prevents them from obeying," as Innocent III states in chapter 10 of *De Renunciationibus*. In this case, such hatred is absent. Finally, regarding the insults directed at the Archbishop, these were said after the unfortunate parish priest had suffered many things, and were not subsequently grave or slanderous; rather, they were complaints, because the parish priest seemed to be deprived of sustenance by the court. Therefore, having considered all these matters, the advocate concludes, appealing to the principle of equity and justice, that "affliction should not be added to the afflicted."

DEFENSE OF THE COURT. However, it must be observed that there are many and no less weighty arguments that demonstrate the existence of a scandalous and immoral life on the part of the parish priest, a life that appears to deserve punishment and proper chastisement according to the law. Everything necessary to prove concubinage is present. Maria C. is present, as well as William and Alexander, who testify to the shameful relations of the parish priest, both with Maria herself and, especially, with the woman from Culmore. We can even refer to the retractions issued by these same individuals. Although they dared to deny, outside of court, in private letters, what they had stated in court, or they reject the same as if it had been extorted from them by force or deceit; nevertheless, the testimony given in court must be upheld; as Reiffenstael states in Book 2 of the *Decretum*, number 335, concerning witnesses: "If a witness, under oath..."

[*Latin ed. p. 189*]

GAETA, 189: "One witness testifies; but if he has said the contrary, either before or after this testimony, even explicitly admitting that he said something false in court; nevertheless, the testimony given in court must be upheld, unless the contrary is proven by other evidence." Thus, Abbot c. Per tuas, n. 11, Be, and others. If one were to disregard these three testimonies, which seem to contradict each other, many more are available that appear to establish the truth. There are thirteen other witnesses, all of whom testify against the priest's life. It is true that some of these testify regarding his reputation, while others testify regarding suspicions; nevertheless, it must be remembered that the matters and crimes in question here seek concealment, and can only be proven by more or less distant indications. Therefore, canonical law, in order to effect punishment, considers not only those clerics who are fully proven to have lived in concubinage with a woman, but also those who are in notorious suspicion of concubinage. Thus, as De Angelis states in title 2 of Decret, book 2, n. 2: "Clerics are called concubinaries not only those who live shamefully with a woman, but

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also those who maintain cohabitation with a suspicious woman... And it is not necessary that the concubinage or incontinence be notorious, provided that a notorious suspicion of incontinence or concubinage can be proven, supported by reputation, so that the Bishop may proceed, without clamor or pretense of judgment, but solely by examining the truth of the facts, after warnings." And this is a matter of common knowledge. Mascardo Decio and others, in Reiffenstuel, title De praesumpt., n. 6, teach that indications or presumptions are "and are considered" to be true "evidence" in a matter in which "presumptive evidence" can be made. This is certainly the case when the indications are proximate, "that is, which immediately concern the matter or crime in question" (Farinacius, quaest. 36, n. 45), and when the presumptions are very serious, that is, of law, of fact, or of nature, as Mascardus illustrates in De probat, conclus. 1246, n. 4. To converse secretly and privately, often at night...

[*Latin ed. p. 190*]

190 In Gaeta, a woman of questionable reputation introduces both a presumption of guilt, according to the cited work *De Angelis*, and a most serious offense against nature, concerning the cleric, namely, concubinage. Indeed, after the testimonies of these witnesses, these indications and presumptions certainly militate against the parish priest. For these witnesses speak openly of his familiarity with G. (the aforementioned women), and they frequently state that they have seen this woman leaving the priest's house after two, three, or even four hours, to return to her own home, and similar things, which are certainly not trivial. Vincent, it is most important to note, who served in the priest's household for two years, reports that he has seen the priest alone with Mary on several occasions, remaining together for the entire hour, as if they were husband and wife. And the priest, Raphael Pensiero, adds that he heard from the midwife Astone, who practices her profession in the town of Tremonsuolo, that when she was called to the priest's house to attend to him while he was ill, she found him with Mary in the bedroom, and she was scandalized, because these two appeared to behave in all respects as husband and wife. Furthermore, if so many of these testimonies were true, the priest would appear to be almost completely exonerated. "For, as Reiffeiistuel notes in book 2 of the Decrees, title 20, paragraph 298, although these witnesses might still be considered individual witnesses, because they testify to different things and specific acts: nevertheless, when individual witnesses are joined together to fully prove something, when they tend towards the same end, although through different means, as others of the Doctors say, if they are corroborative, it is inferred from chapter 12 of *De successione ab intestato*; and the Abbot notes ibid. paragraph 17, Alexander, cons. 76, paragraphs 4 and 5, book 6; Mascardus, *De probatione*, chapter 379, paragraph 14, citing others: and the statements above in the preceding title, paragraph 4, paragraphs

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99 and 100, agree, where it is shown that from several imperfect proofs, one perfect proof is constituted, according to the prudent judgment of the judge." Regarding the hatred of the Merola family towards the priest, the Ordinary states that it is affirmed, but not proven by the priest himself. The priest has collected much evidence concerning the economist, but not with truth.

[*Latin ed. p. 191*]

GAETA 191: For he diligently attends to the administration of the parish, according to his abilities, and is esteemed by the people. Furthermore, the parish priest objected to certain witnesses, claiming some were personally hostile to him, while others were allegedly corrupted by money. However, he does not prove this equally; therefore, his assertion, like its rejection, seems arbitrary. Indeed, one might even go further and reverse the argument, stating that the witnesses brought forth by the parish priest were, at times, corrupted by money or otherwise coerced. Since two of them confessed to having received a letter from the parish priest. Regarding another objection raised, in which the parish priest declared the judge in this case to be his enemy, the public prosecutor responds that this animosity of the Vicar towards the parish priest, arising from female disputes and transferred to the judge, is to be considered. It could even be said that some witnesses were not questioned according to the articles presented by the parish priest; since the court, at least in substance, if not in form, followed the articles presented and questioned according to them. From all of this, regarding the judge and the witnesses, the truth of the accusations against the parish priest would also seem to be established. However, it remains to be said that the patron of the parish priest argued that the Ordinary should have followed the omitted warning and the gradation of penalties. But it appears that the parish priest was warned, first, from the testimony of the priest Chinappi, who accompanied the deceased Archbishop during the Visitation; and second, from the testimony of the priests Giordano and Peschillo, who were chancellors of the same prelate. More recently, the parish priest should have received that very suspension which he suffered from the current Ordinary. Regarding the gradation of penalties, this should be observed for clerics who do not hold a benefice, as noted by De Angelis in *lib. 3 Decret, tit. 2 n. 2*, but not for parish priests; against whom, a swifter course of action is appropriate.

[*Latin ed. p. 192*]

192 Gaeta orders that the Council of Trent proceed in session 21, chapter 6, concerning reform. And it is justly and deservedly the case that a more grievous scandal and a more harmful crime is the pastor of souls who leads a shameful and scandalous life, and therefore it ought to be corrected more quickly. But even more serious matters are presented in this regard

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by Reiffenstuel in book 3 of Decretals, title 2, number 53 and following: "Therefore, because, according to ancient law, a cleric could be punished with the penalty of deprivation of the benefice and deposition, for qualified fornication duly proven, without any prior warning, according to the laws most closely related; the same must also be said today concerning a cleric who is a concubinarius, when it is clearly known that he is actually committing repeated acts of fornication... also, that a warning is only required to incur the penalty of deprivation of fruits, etc., by the very act itself, and not to incur the penalties imposed by the sacred canons or statutes of the churches of old." But all these things that have been said up to this point are directed towards demonstrating the principal crime of the parish priest, and towards demonstrating the justice of the punishment subsequently inflicted for that crime. But there are also other crimes and accusations by which the same parish priest is burdened: namely, the vain and scandalous usurpation of the divine name, blasphemies against the holy things and against the Archbishop, obscenities, the bearing of arms and violence frequently used against many, neglect of his ministry, during the time that he governed the parish, resistance and war inflicted upon anyone who is a vicar; and besides these, the physical and moral ineptitude of the same parish priest for the care of souls; all these things, which even the witnesses brought forward testified, show what kind of character this man is. With these other observations made, the following question was proposed to be examined: Whether the sentence of the court of Gaeta should be confirmed or rejected in this case. RESOLUTION. After the Sacred Congregation was consulted on June 13, 1885, it decided to respond: "The sentence should be confirmed, and furthermore."

[*Latin ed. p. 193*]

GAETA, 193. From what has been gathered: I. The sacred canons apply to concubinaries, not only those who publicly live in a scandalous manner with a woman, but also those who are in notorious suspicion of concubinage; for these crimes are often committed in secret, and therefore can usually be proven by more or less certain indications. II. Therefore, if, based on reputation, suspicion of incontinence or concubinage can be proven by indications and presumptions, this proof holds its place as legal proof in such matters, in which presumptive proofs are often the only ones available. III. To converse with a suspected woman secretly, privately, and often during the night hours, creates a very serious presumption, both of law and of nature, of concubinage. IV. In this matter, all of this has been proven false by the testimonies of witnesses; while, meanwhile, the unfortunate parish priest is constantly burdened by a reputation of incontinence, among other things. V. Bishops can proceed against clerics who have the care of souls, without fanfare or the appearance of a trial, but simply by examining the truth of the facts, as is permitted by the Doctors and by the Tridentine

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Council, Session 21, chapter 6 on reform, from which it is prescribed to act promptly against those mentioned, in order to more quickly restrain the crimes and scandals that are considered more serious in the pastors of the Christian faithful, who are living a shameful life. VI. In this matter, warnings were not lacking, and it has been proven by the testimonies of witnesses, to whom complete credence must be given.

●●●●●——$>^o-*——*-o-fë$> ●— ILCINENSE. SACRED FUNCTIONS, May 16, 1885. COMPENDIUM OF FACTS. In the collegiate and parish church of St. Quiricus at Urciara, in the diocese of Montalcino, there once existed certain lay confraternities, one of which was under the title of the Most Holy Body of Christ, and performed sacred functions every day, Volume XVIII, page 13.

[*Latin ed. p. 194*]

194. He resided in a certain Oratory, belonging to and connected with the aforementioned church. This Oratory, established towards the end of the preceding century, had obtained the use of the aforementioned Oratory from the Chapter, under certain conditions expressly stated in a special agreement, and with a certain dependence on the Chapter, according to statutes approved by Bishop Joseph Pecci in the year 1793. However, this and almost all other confraternities seem gradually to have declined; so that, whether for this reason or for some other cause, in the year 1869, a new association, called "of mercy," was established in place of all the former confraternities. However, nothing is specifically stated in the constitutions concerning the manner of performing the sacred functions, nor concerning the reconciliation of these functions with the rights of either the Chapter or the parish priest, who is the Archdeacon of the Chapter. This has become a source of controversy. The Governor, who is currently a certain priest named Fabiani, asserts that he has performed all the sacred functions and pious offices since the establishment of this association, having celebrated Mass with singing on September 8th, and a solemn Mass for the repose of souls on November 2nd of each year. However, the Archdeacon, as parish priest, objects, appealing to the aforementioned agreement, and also to the common law, and especially to the statutes which Bishop Pecci approved for the confraternity of the Body of Christ, which succeeded or replaced the confraternity of mercy. A Synopsis of the Dispute. First of all, the Governor vehemently argues that the right to perform these functions belongs to the pious association, independently of the parish priest, because these functions are not of a parochial nature. The Archdeacon, however, insists on the distinction between functions and rights that exclusively belong to the parish priest, and those that are not merely parochial, but rather are sacerdotal, as taught by Monacellus, *Form. legal*, volume 10. And in the latter, the parish priest has no regular authority, and these functions can be performed in other churches, independently of him. To prove this, the

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Governor cites a well-known decree.

[*Latin ed. p. 195*]

Concerning the matter, the Sacred Congregation of Rites, on December 10, 1703, issued a decree (1). This is clearly demonstrated by the resolutions of the Sacred Congregation in Fermo, regarding parochial rights, on June 2, 1836; in Floriana, on August 1, 1739; and in Rieti, concerning ecclesiastical functions, on January 12, 1884, where, regarding the following questions: I. Whether it is permissible for a chaplain to perform novenas, triduums, and other functions with the exposition of the Most Holy Sacrament, independently of the parish priest in such a case; II. Whether it is permissible for the same chaplain to solemnly celebrate Mass independently of the parish priest; – the answer was: Affirmative in all respects, according to the form of the Decrees of the Sacred Congregation of Rites of December 10, 1703. Canonists confirm this: Fagnan, *De Iurep.*, p. 1, canon 4; De Luca, *De Paroch.*; Ferrar, *voc. Confraternitas*, art. II, n. 4; Berardi, *Comm. Iuris publici Feci*, Disp. 4, cap. II, *de offic. Paroch.*. Finally, there is the most recent response from the Sacred Congregation of Rites, dated May 19, 1879, which the Governor ordered to be printed and distributed to the confraternities and others, and also publicly posted. It reads as follows: "Whether it is permissible in another church, and among religious, to sing a Mass for the repose of the soul, which the faithful request to be celebrated for deceased parents or friends, after the funeral rites have been performed in the parish church, even if the funeral Mass is not celebrated in the parish church." To this question, the Sacred Congregation responded: "Affirmatively, provided that the rules of the rubrics are observed." And this is in accordance with sound principles of law. Moreover, the same can be learned from the practice or custom of the places, even of neighboring dioceses. Here, four documents or testimonies of the practice of other confraternities from the dioceses of Siena, Montepulciano, and Pienza are presented, especially concerning the confraternity of Saint Quirico d'Orda, to which it formerly belonged. These undoubtedly demonstrate that sacred functions and offices for the repose of souls, ordered by private individuals, are performed by chaplains, or by others, in which the Mass is sung (1). You have such a decree in Volume I, page 501.

[*Latin ed. p. 196*]

196. The chaplain was appointed, but never the parish priest. Indeed, in the collegiate and parish church of St. Quiricus, the Sodalitas del Suffragio, which was preserved from suppression, always maintained this custom in its own altar, performing the sacred functions without any delegation from the parish priest, and, on the contrary, the parish priest never objected to anything. Surely, no one is ignorant of how important it is to observe these things. The Governor states that if the chaplain issued a declaration

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contrary to the practice of the sodality, it was entirely fabricated; and he adds more to undermine his credibility: he says that the custom of the sodality clearly demonstrates itself to be in his favor, 1. from the testimony of a most distinguished man; 2. from a certain letter sent by the parish priest Ceccarelli to the Governor on February 18, 1870, in which he complained of the violation of his rights; 3. and finally, from the very statutes of the confraternity. Agreements and concordats, if any existed with ancient, now defunct associations, could never obligate the Sodalitas del Suffragio, newly established; since its organic statutes, by which it is governed, were approved by ecclesiastical authority without any such agreements or concordats.

WHAT BENEFITS THE PARISH PRIEST. The parish priest, however, argues differently. And first, the objection raised against the Governor must not be overlooked, for if admitted, his own prayers could be rejected at the very threshold of the trial: namely, that he has no right to appear in the trial, since he lacks a legitimate mandate and the consent of the sodality. Indeed, although the deputation of the confraternity, on February 22, 1884, ratified everything that the Governor had done up to that point with regard to the present case, the present matter seems not to be of the kind in which the deputation can proceed freely on its own, but requires approval from the general assembly, as the Ordinary believes, considering the custom of the sodality and the provisions of its statutes.

[*Latin ed. p. 197*]

ILCINENSIS. 197 Having briefly postponed this question and having also admitted the legitimacy of the mandate, the Parish Priest argues that the Sodalitas a Misericordia has no right whatsoever to the oratory in question, – the property of which belongs to the collegiate and parish church, – or at least, that it cannot claim any rights beyond those enjoyed by the suppressed confraternities, in place of which the Sodalitas a Misericordia has been established; a matter which has been carefully guarded from the very beginning by the statutes. Indeed, when the Sodalitas Corporis Domini had requested the use of the aforementioned oratory after the passage of a year, the Chapter, in a meeting on April 19, 1792, decided to grant it the use of the aforementioned oratory, with the obligation of offering annually and perpetually a three-ounce candle to the Chapter, in recognition of the collegiate dominion of the Church. The Bishop ratified this decision, by decree issued during the sacred Visitation on September 7, 1793. It should be noted that this small canon is still paid by the Sodalitas a Misericordia. Furthermore, it was added that the aforementioned decree, with all the conditions and stipulations contained therein, must be perpetually observed by the pious sodality and its members, under penalty of being deprived of the grace of membership, namely, the concession of the use of the oratory. Nor does the episcopal decree, in order to prevent future disputes, omit to

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specify the norms for the performance of the sacred functions. After enumerating them, it adds: "In the aforementioned functions, if the Chapter is absent, then the chaplain may perform the aforementioned functions, depending on the Archdeacon or the parish priest, or on the first canon coadjutor, if the parish is vacant. It is within the power of both the parish priest and the coadjutor to perform these functions." Moreover, in the year 1834, another episcopal decree was issued for all the confraternities of the diocese of Patti, which established that no sacred function, with singing, could be performed for deceased brothers or sisters, at the Sodalitas, unless a donation is made by the parish priest or by someone delegated by him, whether brother or sister, or outsider. With these conditions.

[*Latin ed. p. 198*]

198. ILCINENSIS. It appears indeed that [the Sodalitas] is entirely subject to the Congregation of Mercy, since the Vicarius capitularis of Ilcinensis, approving its statutes in the year 1869, added the clause: "with prior observance of the sacred canons, synodal constitutions, and episcopal decrees, and with the rights of the parish priest reserved." After these things, no one can fail to see, the Parish Priest argues, that it is not permitted to the Governor, let alone to introduce new functions, under any pretext, even that of the advancement of the Sodalitas, but neither can [he] fulfill old ones through a chaplain, without the consent of the parish priest. This, he says, becomes even more evident when one considers that the oratory of which we are speaking is not distinct and separate from the parish church, as falsely supposed and asserted by the Governor, but is attached to and united with the same church. Therefore, when the Governor, for his own purpose, cites doubts III and IV of the general decree of the Most Holy Religious Congregation, he seems to be singing outside the choir, since the matter there is of oratories located within the boundaries of the parish, but separated and distinct from the parish church; and it would be more appropriate to consider doubts I and II of the same general decree. Therefore, the Holy Congregation, in this decree, published precisely to put an end to the disputes between the Parish Priest and the Confraternities, makes a distinction between secular Confraternities erected in parish churches or chapels or oratories; which depend on the parish and are added to it, and Confraternities constituted in public churches or oratories, which are located within its boundaries; and it grants almost all rights to the Parish Priest in Confraternities of the first type, but not in Confraternities of the second type. Once, therefore, the oratory of the Sodalitas is established as being attached to the parish church and dependent on it, it seems spontaneously to flow from it, and nothing can be carried out regarding sacred functions without the permission of the parish priest. Following custom, the Parish Priest says, he does not appeal to the Governor, but to those who are patrons, not only in the territory of St. Quiritius, but also in other

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places within the Ilcinensis diocese.

[*Latin ed. p. 199*]

ILCINENA. 199 souls, including Monticello, Castel del Piano, and the city of Ilcinena, as the individual superiors of the confraternities existing in these places attest, whose testimonies are found in the records. Indeed, the chaplain of the pious Sodality of Mercy, who has held this office since its establishment, namely since the year 1869, explicitly states that he has performed the sacred functions, with the prior consent of the archpriest, according to the episcopal decree of the year 1793. However, it is futile and inappropriate for the governor to appeal to the customs of other dioceses, since, although they may be favorable to him, they can never constitute a law for the Ilcinena diocese, and much less for the sodality of Saint Quiricus in Orcia, given the particular reasons and, above all, the conventions and agreements by which the members agreed to be admitted to the oratory dependent on the parish church. Indeed, it is clear to all that agreements and conventions must be observed scrupulously. Therefore, the Holy Congregation of Sacred Rites, having in the aforementioned decree enumerated many functions among the parochial rights, added: "saving, however, the conventions and agreements perhaps made in the erection of confraternities, the agreements between parties begun and approved by the Holy See, indulgences, synodal constitutions, and at least customs of a hundred years' standing." And Pope Benedict XIV also stated this. Regarding the custom of the sodality of the Divine Mercy within the limits of the parish, the parish priest states that this sodality does not have its own chaplain, but that this office is exercised in turn by the canons of the collegiate church. Indeed, on more solemn feasts, according to the agreements and customs, the parish priest has precedence over the others in performing the functions. "If," he says, "the governor were to examine this sodality and change it, then all would be settled in peace." Having considered these matters, it is necessary to state the purpose.

[*Latin ed. p. 200*]

QUESTION 200: Can a sodality, performing works of mercy with singing, and other non-parochial functions, be served by a chaplain, independently of the parish priest in such a case?

RESOLUTION: The Sacred Congregation, having considered the matter, on May 16, 1885, decided to respond: Negatively.

FROM WHICH THE FOLLOWING IS GATHERED:

I. It is undoubtedly established by the general decree of the City and the World that confraternities erected in chapels, both public and private, annexed to parochial churches and dependent upon them, have dependence

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upon the parish priest in the performance of ecclesiastical, non-parochial functions.

II. The dependence of the Oratory is demonstrated by the acts and conditions imposed by the collegiate body and accepted by the sodality, while granting the members of the Oratory the simple use thereof; which is constantly confirmed by the payment of the small canon, which is still made.

MANDELEN. OPENING ON JUNE 13, 1885. Session 24, chapter 13, concerning Reform.

SUMMARY OF THE CASE: By Apostolic Letters dated May 4, 1881, the parish church of the town of Mompeo was granted to the priest Erminio Iacobelli, with the obligation of an annual pension of 100 livres, in favor of the priest Aloysius Bonacasata, who had resigned the aforementioned parish. However, when the new parish priest paid the pension only for the first year and subsequently chose not to pay it, citing excessive financial constraints, the priest Bonacasata appealed to the Sacred Congregation, denouncing the non-execution of the pontifical rescript. Asked, as is customary, the Bishop, after hearing the parish priest,

[*Latin ed. p. 201*]

MANUELEN. After referring to 20 documents concerning the good of the Oratorian order, he responded: it is not true that the parochial benefice yields minimal income; for, after careful investigations, it has been determined that it amounts to 970 florins, after all expenses have been deducted. Regarding this matter, it appears that 100 florins must be paid to the returning priest until provision is made for him.

A SYNOPTIC DISCUSSION. DEFENSE OF THE PAROCHIAL PRIEST. Although the Pontifical Rescript has the force of law, and therefore everyone is bound to venerate and scrupulously observe it; nevertheless, if there is a just and reasonable cause, the faculty of opening the matter [for review] is often granted, so that a way may be opened for the judge to render justice to everyone. Gonzalez ad Reg. 8 Cancell. gloss. 66 now 53, Rota coram Ansaldo decis. 578 num. 28. S. O. C. in Fermo, concerning the Pension, March 17, 1827. Indeed, it is the law that pastors of souls must be provided with a suitable and adequate livelihood, which, according to the decree of the Council of Trent, session 24, chapter 13, concerning annuities, should amount to one hundred scudi per year. Therefore, pensions granted from parochial benefices should be moderate and reasonable, so that the parochial priest always retains a suitable and adequate livelihood. And this is the mind of the Pontiff in granting such pensions. If, however, the income of the parish is exaggerated, and such a pension is obtained from the same, which would harm the priest and diminish his adequate livelihood, it would be a case of deceit and fraud, whether deceitful or not, which would always invalidate the rescript. Cap. on letters 20, Concerning Rescripts; Ferraris v. Rescript n. 30, 31, and following, and would fall within

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the jurisdiction of opening the matter [for review]. But it can be proven by several arguments that, in some cases, the income of the parish is so meager that, after deducting the expenses associated with the benefice and the pension, even if it is small, it is far from sufficient. And first, from the testimony left by the parochial priest to the General Vicar, who attests that the income of that parish, after deducting expenses, does not exceed 250 florins.

[*Latin ed. p. 202*]

202. MANUELEN. Barely half of the appropriate conciliar contribution; 2) From the inventory compiled by the Reverend Economus of vacant benefices, when the parish priest was assigned to the possession of the parish benefice; from which it is gathered that the canons and census amount to the sum of 238.56 florins, including those which the parish priest declares, through the confession of the pensioner himself, to be irrecoverable. Thus, it must be concluded, according to the parish priest, that the revenues of the parish in no way reach the appropriate conciliar contribution. Therefore, if the pension and other expenses inherent to the benefice are deducted, no portion of the fruits remains for the parish priest for his sustenance. Having proven the insufficiency of the revenues, it is the opinion of the most learned jurists that the pension must be entirely abolished; Lotherius de re benefic. lib. 1 quaest. 42; Rota coram Cavallerio dec. 404 n. 1; S. C. C. in Reatin. pensionis 15 Decembris 1804 etc. And this applies even if the holder of the pension has given his consent to the reservation, provided, however, that he has not promised to pay the pension from his own resources; De Luca de pens. disc. 16 et 17; S. C. C. in Firmana pensionis 17 Martii 1877. DEFENSE OF THE PENSIONER. On the other hand, it must be noted that the laws of the Church most clearly prohibit that a cleric who has resigned from the Church be placed in such distress that he does not know how to live. "Nor shall resignation be granted unless it is established that he can conveniently live from elsewhere; and otherwise, the resignation is null." Trident, sess. 21 cap. 2 de Ref. This passage applies even if it concerns inexperienced parish priests. Trid. sess. 27 cap. 6 de Ref. These prescriptions have been fully confirmed by the practice of the S. C. C., as seen in FyStetten, 11 Augusti et 22 Septembris 1712, and in Limbergen, 19 Decembris 1857. Therefore, it is established that pontifical rescripts, by which pensions are reserved in favor of the Rector of a parish church who has resigned from it, must be sustained in every way; and conversely, it is more difficult to obtain the granting of a dispensation, which is always granted with difficulty, unless there is evident proof of some substantial defect in the rescript, such as...

[*Latin ed. p. 203*]

MANUELEN. Concerning a certain error of considerable gravity in

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prayers, namely, with regard to the present matter, if it has been reported to the Pontiff that the parish benefice is very rich, while it is in fact extremely poor, to the point that it is entirely incapable of providing for the full pension; *Rota in Verulana*, 5 December 1817, before Bussio, S. R. O. in P armen. Execut. litt. Apost. 22 June 1833. However, in this matter, it does not appear that a false report was made to the Pontiff concerning the revenues of the parish of Mompeo; nor is it sufficiently proven that the parish is incapable of providing for the pension. For the pensioner, as being entirely alien to the truth, rejects what the parish priest endeavors to suggest concerning the scarcity of revenues, since these revenues amount to the sum of 1204.80, besides uncertain emoluments. In confirmation of this, he transmits an official census, from which it is clear that the parish pays a tax of 100.12 for rural properties, and 13.81 for urban properties. The census of properties, upon which this tax was imposed, was drawn up after those properties had already deteriorated. Therefore, he argues, if such a tax is paid, the revenues cannot be so meager as the parish priest asserts. However, it is of great importance to note the report of the Bishop, who stated that the parish was required to present a revenue, free from burdens, of 970. From this, it is clear that the parish priest is unjustly complaining about the small pension; for, after deducting the burdens and even the payment of the pension, the parish priest has, according to the testimony of the Bishop, 870 livres remaining each year, which is more than sufficient for a proper and adequate provision. Furthermore, the parish priest, in his report, entirely gratuitously asserts that the revenues of the parish are so meager that they cannot support the pension. However, the Vicar General rejects as false the testimony presented by the parish priest. Moreover, no credence should be given to the submitted statement of assets and liabilities. For the parish priest does not faithfully report the revenues, but diminishes some, and omits others, even of considerable importance; he, on the other hand, exaggerates the burdens and expenses, and entirely lacks legitimate proof of those things which he asserts. Therefore, since the parish priest is...

[*Latin ed. p. 204*]

204. MANUELEN. It must be asserted, as that which must be repelled by just reasons; and according to the principle of law, namely, "<The accused becomes the plaintiff in raising an exception>", one must conclusively prove what one affirms. Furthermore, it is known in law that one should only proceed to reduce a pension when it is clearly established that the revenues of the benefice are insufficient to support it; Lotterius de re benef. lib. 1 quaest. 42; S. C. Concilii in Reatina concerning the pension of 15 December 1804, and in Firmana concerning the pension of 17 March 1826. Therefore, if it has not been proven in this case that the revenues of the parish of Mompeo are so meager that, after deducting expenses and

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paying the pension, a suitable sum for the parish priest does not remain, it must be concluded that there is no basis for reducing, and much less for ceasing, the pension. Therefore, the full amount must be paid from the day on which the parish priest sustained it. For the pension, legitimately imposed, is to be paid by the beneficiary under a grave obligation, because by accepting the benefice, burdened with a pension, he is considered to have contracted with the pension holder and to have obligated himself to payment; Schmalzgrueber in Iure eccles, univ. tom. 5 part. 1 tit. 12 num. 26 dub. 6; Ferraris in Bibliot. can. v. Pensionar ius n. 108. With these considerations for both sides, the following questions must be clarified.

I. Does the decision of the court enter into consideration in this case? And to the extent that it is affirmative.

II. How should the pension be paid in this case?

RESOLUTION. The Holy Congregation, after deliberation on 13 June 1885, decided to respond:

To the first: Negatively in all cases, and furthermore.

To the second: Provision is made in the first.

FROM WHICH ONE MAY GATHER:

I. It is not permissible by law to accept the resignation of a parish, unless it is established that the one resigning can live comfortably from other means; otherwise, the resignation is considered invalid.

II. Regarding this matter, it is extremely difficult for the court to intervene concerning pontifical decrees, by which pensions are reserved in favor of those resigning from a parish.

[*Latin ed. p. 205*]

MANUELEN. 205 III. Tamen, cum sit causa iusta et laudabilis, facultas aperturae oris conceditur, sicut in materia pensionum, si narraretur Pontifici beneficium esse opulenta, dum vero esset pauperrima. In proposito, studium et calliditatem Parochi non potuerunt vincere per documenta addita, quae ostendunt reditus paroeciae esse tales, ut beneficium sit pauperrimum, ita ut congrua parochialis non sit.

ASCULANA REDUCTIONIS ONERUM. Die 16 Maii 1885. COMPENDIUM FACTI. Anno 1730, Iacobus Conti instituit quinque sacra patrimonia, quibus clerici pauperes civitatis Asculanae possent promoveri ad sacros ordines. Cuilibet sacro patrimonio assignavit dotem quae sufficeret ad titulum sacrae ordinationis, juxta synodalem taxam. Adiecit autem onus duarum missarum pro qualibet hebdomada ad altare privilegiatum unicuique ex promotis ad sacros ordines per dicta patrimonia.

Iamvero, clericus Romanus fruens uno ex his patrimoniis, cuius reditus summam 159 libellarum non excedit, petiit, cum sit pauper, ab Apostolica

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sede, exonerari a praefata celebratione ad tempus; idest, donec per se oneri satisfacere valeat. Aiebat enim, si alteri sacerdote danda esset eleemosyna, reditus sacri patrimonii poene totus absorbeatur. Episcopus, de more requisitus, retulit, oratorem esse pauperem, bonis imbui moribus, et dignum ut eidem gratia indulgeatur. Et prosecutus est: qua de re, submisse, putarem quod, determinato onere Missae unius in hebdomada pro hoc patrimonio, in perpetuum celebrandae in altari privilegiato, ad mentem pii fundatoris, addatur gratia, donec orator ad sacrum Presbyteratus ordinem non sit promotus, ut missam unam in quolibet mense celebrare facere teneatur.

[*Latin ed. p. 206*]

206 ASCULANA. A Synopsis of Disputations. GRACE SEEMS TO BE DENIED. However, it should be observed, above all, that the will of the testator ought to be considered as law, and especially religiously observed, since it pertains to divine worship and the redemption of souls. "For 'circumcision' is nothing, and 'uncircumcision' is nothing," but what matters is keeping the law of God. L. 1 C. De ss. ecclesiis, as well as c. Voluntas ultima Caus. 13 qu. 2, Council of Trent, Session 23, chapter 6, De Ref.; Clementine Decretal, Quia contingit, concerning religious houses, and Sacred Congregation of the Holy Office in Romana, Commutationis Voluntatis, *June 14, 1806. These matters are to be considered all the more carefully, since here we are dealing with the burden of masses; in preserving which, as testified by Benedict XIV in De Syn. dioec. L. 13 c. ult. n. 23, the Sacred Congregation is so zealous, that, if these are relinquished, all other burdens are usually reduced. Furthermore, the testator's precise will makes the granting of a dispensation more difficult, by which he forbade the remission of the burden, lest a grace be sought that might derogate from his disposition, and ordered that no one should be able to make use of such a grace, unless it were granted by the authority itself. GRACE SEEMS TO BE TO BE GRANTED. Nevertheless, it must be noted that the Supreme Pontiff can, for a reasonable and just cause, change the pious intentions of the faithful. Indeed, whenever, without any fault of the possessors, revenues diminish which were left to fulfill a pious intention, the burdens also must be diminished, if the fruits are to correspond to the burdens, as stated by Fagnanus in c. Ex parte de Constit.; Sacred Congregation of the Holy Office in Vallisoletana, May 22, 1784, §; although, in Nullius S. Martini, August 24, 1822, §; and in Tudertina Reductionis onerum, January 27, 1827. Therefore, in order to apply these principles to the present case, the following should be noted, as read in the document S. O. C. in Causa Anglon. et Turrien. Reductionis onerum, November 26, 1853:

[*Latin ed. p. 207*]

ASCULANA 207, among the summaries of petitions: "It must be noted that the chaplaincies of which mention is made constitute a sacred patri-

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mony of the Order, and it is stipulated in law that from this patrimony, as much fruit as is sufficient for the honest sustenance of the clergy must be received. Furthermore, from the Bishop's report, it is understood that, if the lecturers are obliged to celebrate Masses from the foundation's funds, there is not enough provided for their daily sustenance." Regarding the prohibition contained in the will, it can be noted in accordance with Reiffenstuel I. III Title 26 §. 23 n. 807, "that every will and disposition of a pious testator tacitly submits itself to the order and disposition of the Supreme Church," and has a tacit clause, "saving the authority of the Supreme Pontiff." And this principle is openly indicated in Clementine De relig. dom.; hence, it could be aptly invoked in chapter I. 58 ff. Delegatis 1: "<No one can, in his will, stipulate that the laws should not have effect in his will.> Having noted these and other things, the question was raised as to how the lecturer's petitions should be considered. RESOLUTION. The Sacred Congregation, having considered the matter on May 1, 1885, responded: "For the sake of expediency, and according to the Bishop's opinion, after having spoken with the Most Holy..." FROM THE SACRED CONGREGATION FOR THE HOLY OFFICE, CIRCULAR LETTERS in which are declared valid dispensations for marriage, even if the marriage has been consummated. The Most Holy and Roman Church has always abhorred the heinous crime of incest, and the Supreme Roman Pontiffs have decreed that those who have not been ashamed to commit it, if they should flee to the Apostolic See seeking a dispensation regarding impediments to marriage, their petitions should be considered tainted with deceit and fraud, and therefore the dispensation would be invalid; and this was done for the most holy reason, so that the faithful might be deterred from this most grievous crime.

[*Latin ed. p. 208*]

208 DECREE. These documents, and the decree which the most holy and universal Congregation of the Roman Inquisition, with the approval of the Roman Pontiff, promulgated on Thursday, August 1, 1866, bear witness to the mind of the Holy See, and which is of this nature: "Secret and null and void are all dispensations, whether directly granted by the Apostolic See, or by pontifical delegation, concerning any degrees of prohibited consanguinity, affinity, spiritual relationship, or public decency, if the betrothed, before the execution of such dispensations, or before or after obtaining them, have committed incest; and whether they are questioned or not, if they maliciously or even unknowingly have concealed the incestuous union between them, whether it is publicly known or hidden, or if they have concealed the intention and purpose with which they entered into such a union, in order to more easily obtain the dispensation." The Most Holy Penitentiary, following the footsteps of the Supreme Congregation, established the same on July 20, 1879. However, since many sacred

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prelates, either individually or jointly, have reported to the Holy See that great inconveniences arise in the execution of matrimonial dispensations, and that, especially in these miserable times, the well-being of the faithful is often endangered by what was intended for their salvation, the Most Holy Lord Pope Leo XIII, moved by divine providence, after long and mature deliberation, and adhering to the opinion of the Most Eminent Cardinals in the entire Christian republic, together with the undersigned, ordered that these letters be given to all local ordinaries, so that they may be informed that the aforementioned decree of the Holy Roman and Universal Inquisition and the Holy Penitentiary, and whatever else has been declared, established, or introduced by the style of the Curia in the same sense, is revoked, annulled, and shall have no force hereafter; and that it is also established and declared that matrimonial dispensations shall be valid in the future, even if an incestuous union, or the intention and purpose of obtaining the dispensation through it, has been concealed; contrary provisions, even those worthy of special mention, notwithstanding. However, because of very serious reasons, the Most Holy Father deems it prudent to relax the strictness previously observed in this matter; His intention is that nothing be taken away from the horror that the crime of incest ought to inspire in the minds of the faithful; rather, He desires to arouse the zeal of pastors of souls, and of others to whom the care of the honesty of morals among the faithful has been entrusted, so that they may diligently and effectively work to combat this wickedness, and to deter the faithful from it, by the penalties prescribed for those who are subject to them. Given at Rome, from the chancery of the Holy Office, on June 25, 1885. Most devoted in the Lord, R. CARD. MONACO.

[*Latin ed. p. 209*]

209 Letters from His Holiness Pope Leo XIII to the Emperor of Japan, in which he requests that the aforementioned Emperor grant the greatest possible freedom to Christians; and that he continue to protect and favor their institutions. Most Excellent Emperor. Although we are separated by a great distance, it is not hidden from Us that You, Most Excellent Emperor, have a singular interest in the welfare of Japan. Indeed, the actions You have undertaken to promote the advancement of civil affairs and, above all, to cultivate the morals of Your people, as evidenced by the wisdom of Your counsel, are worthy of praise and commendation from all those who seek the prosperity of nations and the sharing of the benefits that are easily perceived through human culture. Moreover, because a more refined urbanity of morals prepares the mind to conceive wisdom and to embrace the light of truth. For these reasons, we ask that You receive the services of Our most devoted will, as we most sincerely promise, in a manner that is truly humane, and that You do not consider them burdensome. And this is the reason why we have decided to send these letters to You, namely,

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to express Our gratitude. For those services which You have rendered to Missionaries and individual Christians within Your vast dominion, understand that we are indebted to You. Indeed, we have learned of You, Most Excellent Emperor, as a benevolent and well-intentioned ruler in both of these instances. Therefore, nothing that You can do will be more praiseworthy in the pursuit of justice, nor more beneficial to the public good, than to grant assistance to the security of the Empire, for from the Catholic religion, You can expect no small aid. For the foundation of all empires is justice: and justice has no part that is not beneficial to Christians. Thus, it happens that those who profess the Christian name are, above all, reminded, not by fear of punishment, but by the voice of religion, to respect royal authority, to obey the laws, and to desire nothing in the republic except that which is peaceful and honest. Therefore, we earnestly request that You grant to Christians a greater freedom than is possible, and that You continue to protect and favor their institutions, as is Your custom. In return, it will be Our duty to supplicate God for all good things, that He may bring Your endeavors to fruition, and that He may grant greater and greater blessings and benefits to You and to all of Japan. Given at Rome, near St. Peter's, on the eleventh day of May, in the year 1885, in the eighth year of Our Pontificate. Acts, Volume XVIII, page 119, line 14.

[*Latin ed. p. 210*]

210. FROM THE HOLY CONGREGATION OF THE COUNCIL, REATINA DIOCESE, CONCERNING MARRIAGE. Dated February 28, 1885. Session 24, chapter 1, concerning impediments to marriage. SUMMARY OF THE CASE. Anthony, of the Diocese of Reatina, having solemnly exchanged betrothals with Dominica Fosso, in the year 1861, afterwards, after some disputes and disagreements, Dominica broke off the engagement and returned the ring to Anthony; who, deeply grieved, shortly afterwards enlisted in the military; and in the meantime, Dominica, against the will of the Church, contracted marriage with Aloysius Aquilini. About five years later, Anthony returned, and discovered that Dominica's mother had violated the faith of the betrothal by offering him another daughter, Annunciata, the sister of Dominica. And indeed, with religious rites, Anthony contracted marriage with the aforementioned Annunciata, in Reate. However, scarcely a month had passed when Annunciata abandoned her husband and returned to her family; and attempts to bring about reconciliation between the parties proved futile; indeed, as the parish priest learned, a prior impediment to public decency existed between the spouses, and, without consulting the Ordinary, he ordered a separation until an Apostolic dispensation could be obtained, noting in the marriage book the reason for this impediment. However, Annunciata opposed the petition for a dispensation, claiming that she had entered into the marriage unwillingly. On the other hand, the aforementioned husband instituted

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proceedings before the ecclesiastical court to declare the marriage null, which he subsequently abandoned. Therefore, the court itself exerted every effort to bring the parties to reconciliation, even obtaining, for this purpose, from the Most Reverend Prelate, a dispensation concerning impediments in January 1874.

[*Latin ed. p. 211*]

REATINA, 211 [date]; however, it was delayed due to the reluctance of the parties involved. Indeed, in the following year, a woman presented herself in Rome, where she entered into a civil union with another man, and the man, in turn, entered into a civil union with another woman. Under these circumstances, the aforementioned Tribunal considered it its duty to pursue a judgment of nullity, and in March of the year 1879, it convened a tribunal with the Defender of the Bond, the parties, and witnesses. Witnesses were summoned and testified regarding the annual custom and the initial betrothal between Anthony and Dominica. The woman defended her position; the man, however, appointed a procurator to advocate for the nullity of the marriage. After hearing the defense of the marriage, on January 23, 1883, the judgment was pronounced, declaring the marriage between Anthony and Dominica null and void due to a prior impediment of public decency. The Defender then appealed this judgment to the Sacred Congregation.

SYNOPTIC DISCUSSION.

OPINION OF THE THEOLOGIAN. The Theologian considered such betrothals to have been true and valid, stating that Trent had not introduced any changes regarding betrothals, and that they remained under the jurisdiction of common law. According to common law, even without witnesses, betrothals are validly contracted and considered valid, provided that there is mutual consent, unless an impediment is presented that destroys the true promise, or that has such efficacy in contracting a future marriage. Even signs can be taken in place of words, and according to the different customs of places, certain signs are considered to be a mutual promise. The testimony of the parish priest in this case established that in that place, the custom of celebrating betrothals is to give and receive a ring. But in the case in question, Anthony truly gave a ring to Dominica, and she kept it on the same finger, as the witnesses testified; therefore, it follows that they truly celebrated a betrothal; because in the giving of the ring, the promise of the betrothed was signified, and in the acceptance of the ring, the betrothed woman reaffirmed her promise.

[*Latin ed. p. 212*]

212 REATINA Witnesses spoke of the ring as if it were a necessary sign of betrothal, and therefore they truly believed that the betrothal had been

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validly celebrated. The parish priest, preventing the cohabitation of the spouses, did not in any way doubt that the betrothal preliminaries had been valid; which the Tribunal confirmed by declaring that no marriage had been entered into between Anthony and Annunciata. However, since the contract of betrothal is bilateral and obligatory, it is not sufficient for one party to promise by giving a ring, but the other party's promise must follow. And this promise is not only held to be present in the acceptance of the ring, but also in the mutual assurance that the betrothal has been duly celebrated. Indeed, Annunciata received and retained the ring; afterwards, Anthony sent gifts and tokens of affection to her, and she accepted and retained all of these things on a Sunday. It is commonly held among Theologians and Canonists that gifts and tokens of affection signify the mutual promise made in the celebration of betrothal, because from these, mutual consent is sufficiently indicated; especially if, before the betrothal was celebrated, the obligations of marriage had been discussed between the parents, as the witnesses attest in this case. It does not invalidate this, even if one witness either erred or told a lie on the matter, indicating a different house in which the betrothal was celebrated, while other witnesses gave consistent testimony. However, it is from *S. Rota*, Ventimillien, February 8, 1705, before B or ullo, § 2, that in any even the smallest doubt, the judge must pronounce in favor of the complete exclusion of betrothal; but this must be understood concerning the nature of betrothal and its actual contracts, and not concerning the place where it was celebrated. Furthermore, the Consultant stated that the dispensation concerning the impediment of public reputation, obtained from the parish priest for the marriage already contracted between Anthony and Annunciata, was entirely ineffective. For the dispensation removes the impediment, but does not make valid that which was utterly void; because, although they entered into a contract in ignorance, they nevertheless did not enter into a valid contract, and good faith ceased on the day that the priest...

[*Latin ed. p. 213*]

At REATINA, on the 213th day, he was urged to live separately until a dispensation could be obtained. And it was necessarily required that both parties renew their consent for the dispensation to take effect. However, Annunciata had left Anthony's house before the impediment was declared; Anthony, immediately upon learning of the nullity of his marriage, went to the Curia to request that it pronounce a sentence of nullity regarding his marriage. How could these circumstances allow the spouses to come to an agreement? The dispensation, in order to be valid in practice, must be accepted by the two parties who are nullified from being joined in marriage, especially if these are not the very spouses, but another person obtains the dispensation. The dispensation achieves its purpose by itself; it removes the impediment and frees the betrothed so that they may, if they wish, renew

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the marriage; but, neither directly nor indirectly, generally speaking, does it compel the betrothed to marry, even when using the dispensation. Finally, the Consultor theologian judged that the marriage celebrated by Anthony with Annunciata was null due to an impediment of public honesty. Indeed, this impediment, even established by civil law, follows from the dictates of justice; because the betrothed contracts a certain degree of kinship, or some kind of affinity, with the betrothed's relatives. With regard to this, propriety and decency demand that no one marry a girl to whom another has been betrothed in marriage, or to whom betrothal has promised a wife. This law has been extended more or less at various times, and from the Council of Trent it extends to the first degree. The betrothal, about which we are speaking, was not conditioned, nor was it indefinite concerning the person, and therefore it was valid, and from it must arise the impediment of public honesty, which remains perpetually, and is not removed even if the betrothal is dissolved by mutual consent (1). Sometimes, it is disputed whether a betrothal dissolved by mutual consent is invalid, and whether the impediment arises (1) Among the theologians concerning consent. But Sánchez more truthfully affirms that, even if the betrothal is dissolved by mutual consent or for another reason. Pontius, in question 7, chapter 35, and others, deny, as do Croix, in I. 5, page 87, d. 78, n. 20, Concina, page 330, n. 5, and Farin, from the decree of the Sacred Congregation, that n. 81, that it is absolutely necessary that the impediment arises. For the Sacred Congregation has understood that it has read in the decree of this Sacred Congregation that...

[*Latin ed. p. 214*]

214 In REATINA, the Consultor stated, "It must be inquired whether the marriage agreements in question are valid. He stated that, according to the opinion held by all, an impediment to marriage arises from two sources: namely, from agreements for a future marriage and from agreements already in effect, or from a valid marriage, according to Tridentinum, Session 24, chapter 3, concerning the reform of marriage. Based on this established doctrine, he asserted that in our case, there is no doubt about the validity of the agreements, and consequently, about the existence of an impediment. To support this, he cited Schmalzgrueber, *Jus Eccles. Univ.*, volume 4, page 2, title 1, number 9, which lists the conditions for valid marriage agreements: "In order that a marriage agreement be considered binding, it must: 1. be celebrated between persons who are capable; 2. be made deliberately and freely; 3. be genuine, or without pretense; 4. be specific, or refer to a particular person; 5. be mutual, or reciprocal; 6. be expressed either verbally or by some external sign; 7. and finally, be accepted by the person to whom the promise is made."

OPINION OF THE CANONIST. It is verified that the first five conditions and the seventh are fulfilled without doubt. However, whether the

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sixth condition, which concerns the external manifestation of internal consent, is present, remains to be seen. And although, in this case, the specific words spoken by the future spouses are not individually mentioned, all the witnesses called testified unanimously about the promise of a future marriage; and they testified even more explicitly and unanimously that Antonius promised Dominica. This promise, if invalid, would constitute an impediment to contracting marriage with the woman, which impediment would be removed by the fact that the agreement was made not with the woman with whom the marriage was contracted, and that the promise was revoked and rendered null. It could not be said that the Congregation could effect, by its actions, something that is, by its very nature and according to the canons, an impediment, and not something that removes an impediment, and is valid. Before the agreements are dissolved, they are valid, and from them arises an impediment, even though after they are dissolved, they are valid for producing consequences and for rectifying damages that may arise from them. These agreements, once dissolved, can give rise to damages, but they do not free the parties from the impediment. It has never been the case that agreements were invalid in their very nature, and yet constituted an impediment to marrying another. The impediment does not depend on the will of the spouses; hence, if the agreements have been dissolved, the impediment is removed.

[*Latin ed. p. 215*]

REATINA, 215, it is understood as a sign of promise; betrothals have authors, if the custom of the place is so, as in the Diocese of Rieti, that the giving of a ring signifies betrothal. However, if these betrothals are valid, there is in this case an impediment to public decency, which renders the marriage subsequently celebrated with the betrothed woman's sister in the first degree entirely invalid. It makes no difference that the betrothed, after some time, have become estranged from each other and have entered into other commitments: because this impediment is perpetual; thus, it endures even after the death of one of the spouses. (1) Finally, the Consultor stated that the evidence collected by the Rieti Tribunal sufficiently demonstrates that Anthony had indeed entered into betrothal with Dominica, before he married Annunciata, Dominica's sister. And no noteworthy defect appears in the proceedings, either with regard to the Tribunal's constitution, which, thanks to God, was carried out in accordance with the Constitution of Benedict, or with regard to the manner in which the parties and witnesses were summoned and examined. Another proof to support the existence of the betrothals, about which there is dispute, is taken from the parish register of marriages of the parish. The parish priest of that church has already reported in the aforementioned register of marriages that Anthony entered into marriage with Annunciata, and that upon the celebration of this marriage, an impediment was discovered that nullifies public decency, because

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Anthony had entered into betrothal with Dominica, the sister of the bride. According to Schmalzgrueber, Volume 2, Title 22, paragraph 47, the parish priest, when he writes something pertaining to his office in the parochial books, acts as a public official appointed for this purpose. (1) Sánchez de Matrim, Book 7, section 68, paragraph 20 states: "This impediment is of a future nature, unless it has been dissolved by the mutual consent of both betrothed. Because it is perpetual." Therefore, he adds in paragraph 21: "I do not know on what basis this impediment is said to be perpetual. Indeed, in the preceding paragraph, I have demonstrated the contrary. However, regarding the impediments that nullify marriage, paragraph 12 states: 'This impediment arises from betrothals, in a marriage where...' and then continues.

[*Latin ed. p. 216*]

216 REATINA It must nevertheless be noted that the parish priest ought to have at least consulted the Ordinary before informing the betrothed of the separation; but a lack of prudence does not invalidate the truth. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. Two consultants considered that the judgment of the Rieti court should be upheld; but the defender of the marriage considered it his duty to point out what was contrary to it. And he warned, first, that serious flaws had crept into the procedural records; for the examination of Anthony, the plaintiff, is lacking, according to Instruction of August 22, 1840, §. defined therein. The examination of the wife, Annunciata, is also lacking, according to §. of the aforementioned Instruction (1). Moreover, it is not only that the questions posed by the defender of the marriage were exiled with such solemnity and care as prescribed by the aforementioned Instruction, but also that the questions posed by the judge to the witnesses were often not recorded in detail by the clerk, or were only vaguely indicated, as the words suggest regarding the appropriate questioning of the judge. All of this is condemned in practice, as stated by Pellegrini, *Practices Vicarior*, part 4, section 9, no. 50, as being subject to ambiguities and deceptions; and even if it concerns common causes, it can be much less tolerated in matrimonial cases, which are always of the utmost importance; see *Instruct.*, §. Interim. Later, the Defender observed that there was also a defect if one examines the few questions that the clerk recorded for the judge, and the answers of the witnesses; from which it is clear that the controversy was treated too superficially in the first stage of jurisdiction. Indeed, the witnesses summoned by the plaintiff, whether officially or otherwise, were questioned so sparingly that the existence of the alleged betrothal remains in doubt. In truth, the crux of the matter lies in the subornation: and although it may be inferred from the testimonies, that the ring was given to Dominica, it cannot be said that the giving and receiving of the ring can constitute sufficient proof of the contract of betrothal, if that is the case (1). There is a volume,

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[*Latin ed. p. 217*]

In Rieti, custom dictates such a practice, and it is known that this custom prevails in Rieti; however, this does not immediately imply that the betrothal was of a serious nature. Indeed, it often happens that among young people burning with love, or carried away by some passion, or merely jesting, especially when influenced by drink, or through the giving of a ring, or some other sign, betrothals are rather simulated than actually performed. For example: it is known that the marriage between Anthony and Annunciata was celebrated peacefully, with all the solemnities and precautions prescribed by the Council of Trent observed. It is a well-established principle of law that marriages contracted in this manner are considered valid in the eyes of the law, unless an impediment is so clearly demonstrated that its existence reaches a certainty, at least a moral certainty. But the impediment itself cannot be more certain than the betrothal. For example, between Anthony and Dominica, Annunciata's sister, a betrothal took place, and furthermore, nothing: because although many witnesses may speak of a promise and a reaffirmation of a future marriage, yet no one reports words or other signs from which they themselves perceived the asserted promise and reaffirmation, and therefore, they are clearly doubtful, and the betrothal is argued against by the lack of evidence. Therefore, if the betrothal was not serious, then the betrothals themselves, lest they be more than a mere sign in meaning, must not be considered serious: and if the betrothals are not serious, then neither can the alleged impediment be considered serious, lest it be more in consequence than in the premises. Now, in order to prove that the betrothal was serious, it would have to be demonstrated that the gathering at which it took place was a formal occasion. However, this is not certain: because no witnesses were called, and their testimonies contradict each other regarding the location of the gathering. And this contradiction among the witnesses is such that it cannot be proven that the gathering was a formal occasion, but neither can it be proven that a formal occasion did not take place. And even if it is granted that a gathering and a betrothal took place, the matter may have been done unexpectedly, casually, and without any seriousness, so that it would be easily forgotten.

[*Latin ed. p. 218*]

218 REATINA It could not have been a valid betrothal, as can be seen from the fact that, scarcely two months after the betrothal, the woman, without any reasonable cause, returned the ring to Anthony, who wished to enter the military service of the Lord in order to seek revenge; but she was not at all rebuked for this breach of faith, which she certainly would have been if the betrothal had been seriously undertaken. Therefore, after

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considering all these things, it seemed to the defender of the sacred bond that the assertion of an impediment to public decency had not been proven, and consequently, the nullity of the marriage should not be declared. With the foregoing premises established, the purpose was to resolve the following question: Whether the sentence of the episcopal court of Rieti should be confirmed in this case. RESOLUTION. The Sacred Congregation, after deliberation, decided on February 28, 1885, to respond: The sentence should be confirmed, and furthermore. FROM WHICH IT IS UNDERSTOOD: I. According to the Tridentine Council, an impediment to public decency, arising from valid betrothals for the future, prevents marriage up to the first degree of consanguinity between the betrothed. II. According to the new law, such an impediment does not arise from any betrothals, but only from valid ones, whereas, according to the old law, any betrothals, even invalid ones, produced this impediment, provided that the invalid betrothals were not invalid due to a lack of consent. III. According to both laws, from the most remote times, an impediment to public decency has been established: for decency and propriety seem to require that no one marry a girl to whom his own relative is betrothed, due to a certain proximity and appearance of affinity, which the betrothed contracts with the relatives of the betrothed, even illegitimate ones. IV. The impediment to public decency, arising from betrothals validly contracted, is not removed even if the betrothal is dissolved by mutual consent, or if one of the betrothed dies; because

[*Latin ed. p. 219*]

At Rieti, before the dissolution, the betrothal was valid, and from it arose an impediment which is not subject to the will of the betrothed, but is regulated by the law of the sacred canons. V. Betrothals can be perfected by future promises; and thus, betrothals contracted in this manner are valid, insofar as, by these signs, betrothals are customarily initiated in that place. V I. Hence, betrothals are validly held to have been contracted through the tradition of a promise, when the tradition of the promise in that place signifies betrothal; and the impediment of public dishonor rightly endures, although the betrothal may be said to be dissolved by mutual consent, provided that both betrothed have passed on to other vows.

ARBOREN. REGISTRY OF BETROTHALS. July 11, 1885. Session 24, chapters 1 and 5, concerning the reform of marriage. Salvatori Catzeddu opposed Mathilde Murra, whom he wished to take as his wife, and Sophia Vidili alleged that she had already been betrothed to Salvatori Catzeddu for a long time. Therefore, before the Tribunal, Sophia Vidili, through her procurator, asserted certain articles, and requested that 23 witnesses be examined to prove them. But then, she altered the articles and witnesses several times, until the articles were definitively established as follows: 1. That Salvatori, before witnesses, gave his word to Sophia concerning a future marriage, and that Sophia promised in return; 2. That, after this

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promise, Salvatori often visited Sophia's home; 3. That, Salvatori often declared to many people that he had given his word to Sophia concerning a future marriage.

SUMMARY OF THE FACTS. Furthermore, when questioned regarding the first article, John Catzeddu testified entirely in favor of Sophia Vidili, as did three others who were questioned regarding the second article; but from the...

[*Latin ed. p. 220*]

220 Oristano. Whereas, concerning the third article, six individuals, duly summoned, did not appear; two confessed that they knew nothing; only one, Palmas Éphisius, swore under oath that the matter was as he stated. On the other hand, Salvator Catzeddu, through his advocate, brought a suit against Ioannes Catzeddu, and against Éphisius Palmas; against the former, because he was a lying old man and of no credibility; against the latter, because he was spiritually connected to the Vidili family, as if he were a godfather in baptism. To this, eight witnesses were presented by him, who, duly questioned, asserted with one voice that the matter was as it had been. After all these proceedings, the general vicar of the Oristano court, on July 3, 1883, pronounced judgment; by which he declared that the existence of a betrothal was not proven, and that Salvator was free to enter into any other marriage in the Lord. When Vidili declared through her advocate that she would appeal from this judgment, the court admitted the appeal with the clause: "We set a term of thirty days for presenting the appeal before the judge to whom it is to be submitted." However, the appointed time passed without result, even though Salvator Catzeddu insisted; on August 22 of the same year, 1882, the judge declared the appeal abandoned. But two years later, on August 3, 1884, when Salvator Catzeddu again requested proof of his single status for the celebration of a marriage, Sophia Vidili again opposed, and, presenting new witnesses and forms of questioning, demanded that the case be reviewed. However, the judge, on September 5, 1884, rejected the requests, noting that "the points of evidence... concern matters about which judgment has already been rendered." And on the 15th of the same month, a new judgment was declared, stating that there was no basis for an appeal to the Holy See, since the time for presenting the appeal before the judge to whom it was to be submitted had already elapsed. Despite all this, the Oristano court transmitted all the proceedings to the Holy See.

[*Latin ed. p. 221*]

ARBOREN. 221. Synopsis Disputationis de Iuripellis. Certum est quod sententia diei 15 Septembris 1884, qua iudex arborensis decrevit non esse locum appellationi coram Sede Apostolica, videtur esse in primis non sustinebilis. Quoniam appellatio illa, ex causa praecisa, excludebatur,

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quia actrix, mulier, post sententiam praedictam diei 3 Iulii 1882, et cum ei a iudice primae instantiae mandatum fuisset edocendi intra mensem de intentione appellationis, non obtemperavit, neque intra tempus praefinitum, sed recentissime tantum appellationem prosecuta est. Verum ad haec observari potest quod 30 dies sunt a iure definiti et concessi parti succumbenti, ut, post interpositam appellationem coram iudice, a quo apostolos petat, quibus iudicem ad quem adire valeat; « Ab eo *qui appellat* infra 30 dies instanter apostoli peti debent et eidem intra » dictum tempus a iudice exhiberi. » - Capitulare De appellationibus, in Y I, et concordat L. De iudicibus, eod. tit., et ibi Reiffenstuel, num. 134, qui dicit: « De facto et spectato iure, communi apostoli intra 30 dies a tempore interpositae » adversus iudicem appellationis sunt. petendi. » Denique, si appellanti a iure et a praxi communi conceditur spatium mensis, pro petendis apostolis, iam non potest cogere ipsum intra id tempus edocere quoque de introducta appellatione apud iudicem ad quem. Praeterea, quamvis, iuxta sententiam communem Doctorum, iudex a quo potest appellanti praefigere terminum praesentandi apostolos, sub poena quod alioquin appellatio efficiatur deserta; tamen in casu hoc non constat apostolos fuisse concessos mulieri appellanti ab iudice arborensi: sed hoc unum ex actibus processualibus habetur, quod iudex ille die 14 Iulii 1882 admiserit appellationem a Sophiae procuratore peractam: - « Admissa appellatione, si et in quantum man» datur, prout supplicatum praefigimus 30 dies ad docen» dum de appellationis introductione penes iudicem ad » quem. » - Porro aliud est admissio appellationis, aliud vero.

[*Latin ed. p. 222*]

222 ARBOREN. The concession of the Apostles. And therefore, in the absence of the Apostles, and with their deficiency, a predetermined time limit seems all the more unjust, by which the weaker party was compelled to argue for the continuation of the cause. With these things said concerning the strictness of the law, the title of equity may also be added: for we are dealing with a poor woman, completely ignorant of legal matters; therefore, she deserves compassion, and the restoration of her rights should be easily granted if she has incurred any necessary expenses. And this perhaps even more so, if the intrinsic merit of the cause is considered. Concerning the betrothal contracts, John Catzeddu provides evidence, affirming that he was present at the time and swore an oath. Furthermore, although it is said "one witness is no witness," a single witness is not entirely without effect, but may establish a presumption, or even provide sufficient evidence, according to the Glossary in cap. *Licet universis tit.* concerning witnesses and testimonies, and in Law 3, §. *Decidi oportet C.* concerning matters of credit, and the Doctors there, especially Farinacus, question 63, number 18 and following. And since witnesses who have heard the testimony, such as Palmas, Ephisius, and others, can provide sufficient evidence as supporting

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witnesses, as Reiffenstuel states in *tit. De test, et attesi*, numbers 104, 305; and since from two pieces of sufficient evidence tending towards the same goal, full proof arises, as Reiffenstuel states in number 252 of the same work, it would seem that there is already sufficient evidence concerning the betrothal. But it is again objected that John Catzeddu does not deserve to be believed: for there are three qualified witnesses, two lawyers and one doctor, who testify abundantly to his honesty and credibility. OATHS. On the other hand, the advocate for Salvatore Catzeddu first presents the fundamental principle of law, which he seeks to demonstrate, namely that, when it is a question of granting a release, the judge should be more inclined to grant it, especially when the evidence is completely lacking; referring to the text expressed in Law Arianus 47 and following, concerning obligations and actions. This rule of law seems even more applicable in this case, since it concerns the introduction of a bond contrary to the natural order.

[*Latin ed. p. 223*]

ARBOREN, concerning the freedom of 223 persons. For this reason, in practical jurisprudence, I have always held that the existence of betrothal should not be presumed, unless the most unyielding and perfect proofs are presented; and the advocate affirms this from the Holy Rota in Pampilona, in the matter of Betrothals of June 28, 1754, § 3, concerning Buratto, and in Ventimiglia, in the matter of Betrothals of February 9, 1756, § 2, before the same tribunal; and finally, from the practice of the Sacred Office, as in Rome, or Comeno, in the matter of Betrothals of November 24, 1781, § 6. Having stated these principles of law, the advocate proceeds to demonstrate that the arguments presented, which are legally required to establish the existence of betrothal, are entirely lacking in this case. Indeed, he says, the witnesses presented by the procurator for Sophia Vidili testify only through conjectures, because they have indeed seen Salvatore Catzeddu frequently entering Sophia's house. Among all the witnesses, only one testifies to the presence of Salvatore, namely, Giovanni Catzeddu, Salvatore's uncle; but his testimony is to be disregarded, both because he is an old man, and because he is known to change his statements from morning to evening, and to break the faith given from one hour to the next. Furthermore, the advocate argues that the testimony of Ephysio Palmas should not be considered reliable, because he is the godfather at the baptism of Sophia's mother, and moreover, he harbors an adulterous affection; and therefore, his testimony in matters of conscience is held in no regard by all, since he is a man of the most deplorable morals. From these considerations, the advocate concludes that the most unyielding and perfect proof, which the law requires to establish the existence of the betrothal, is entirely lacking. However, even if the existence of the betrothal were to be presumed, the advocate argues that there are, in this case, reasons why the betrothal should be dissolved. Indeed, the Holy Church, in order to prevent those who are

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unwilling from entering into an indissoluble marriage, which often has very difficult consequences, has always sought to warn rather than to force those who are inclined to withdraw from the betrothal; as is required in Leviticus III, chapter 17, concerning betrothals. And this...

[*Latin ed. p. 224*]

224 ARBOREN. It is well known, and indeed entirely confirmed by the practice of the Sacred Congregation of the Council-, which, omitting other examples, is clearly demonstrated in the cases of Senogallien. Marriage dispensation, September 1, 1714; Major, marriage dispensation, April 24, 1724; Salernitana, marriage dispensation, July 13, 1825. And this conclusion is confirmed by the fact that in the present case, the matter is judged favorably for Salvator Catzeddu; indeed, even by the fact that he himself, being afflicted by the troubles of a woman, entered into a civil marriage with Mathilde Murra. The Defender of the Bond certainly deplores this, but it nevertheless indicates a reason for which the dispensation of marriage may be granted. Having briefly noted these things, the following questions were to be considered: I. Whether there is a place for an appeal in this case. And, secondly, whether and how the judgment of the Arborense court, issued on July 3, 1882, in this case, should be confirmed or rather rejected.

RESOLUTION. The Sacred Congregation, after deliberation on July 11, 1885, decided to respond as follows: To the first question, negatively, and furthermore. To the second question, with the proviso stated in the first.

FROM WHICH WE GATHER:

I. That, according to common law and practice, within thirty days from the day the appeal is interposed against the judge, recourse must be made to the superiors by the one who appeals; and the judge from whom the appeal is made must grant these superiors, within the aforementioned time, so that they may be presented with the indices.

II. That a final judgment passes into a res judicata, even if an appeal has been made within the due time, but the appeal is subsequently abandoned.

III. That there is no place for an appeal in a case where it is clear that, although the intention to appeal was manifested at the opportune time, the appellant, by doing nothing further, seems to have relinquished his right.

[*Latin ed. p. 225*]

SALERNITAN JURISDICTION. On June 14, 1884, and May 16, 1885. Within the territory of Torchiati, belonging to the Archdiocese of Salerno, there exist two churches dedicated to the Blessed Virgin Mary, one under the title of the "Coronata" and the other under the title of "Lauretana," both annexed to the royal chapel of St. Peter at Curtim, which has been so since the eighth century, together with a neighboring estate, erected

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from its foundations by the generosity of the Kings of the Lombards. The royal abbey became a chapel with a jurisdiction almost episcopal in nature, which subsequently ceased to have effect in virtue of the Concordat of the year 1818. The jurisdiction over the chapel and the annexed churches, called "Grancias," was continuously exercised by the Kings and Princes, in addition to the ordinary jurisdiction, until the year 1505. At that time, Ferdinand, known as the Catholic, granted and donated the chapel and the "Grancias" to Trajan, Knight of Mormile, and to his heirs and successors, together with all the rights and possessions held, and especially with the right of presenting or nominating the Rectors of the abbey and the annexed churches in the event of a vacancy. It is said that Charles V, the Emperor, and Pope Clement VIII approved this grant. By hereditary succession, the jurisdiction passed to the Dukes of Montecalvo, or to the Pignatelli family, which was represented in 1871 by Marquis Pignatelli, as well as by the Knights John and Aloysius Pignatelli. These individuals, exercising power granted to them by the civil government, claimed the right to sell the assets of the churches under their jurisdiction, and took possession of the assets of the abbey, as well as of the churches of the Blessed Virgin Mary, "Lauretana" and "Coronata," assigning a life pension of 3400 livres to the Abbot. Then, in the year 1872, the abbey sold properties located within the boundaries of the town of Nocera for the sum of 212,059.16 livres. And although in 1876 a signed agreement was delivered to the Archbishop...

[*Latin ed. p. 226*]

226 A document from SALERNO was sent, in which the obligation was undertaken to preserve the remaining assets of the Abbey, and also to gradually repair the damages inflicted upon the same Abbey through the aforementioned sale; however, they proceeded with the alienation of the remaining assets, partly during the year 1879, and partly at the beginning of the year 1880. It was now necessary to proceed with the sale of assets belonging to the churches of the Most Holy Virgin, Crowned and Lauretana. To complete this final alienation, they requested and obtained Apostolic permission on July 20, 1880, under the following conditions: namely, that the petitioners deposit a sum of money with the Ordinary as security for the satisfaction of the debts attached to said assets, producing an annual return of 250 lire, and that the patronage rights be completely relinquished. However, before this decree reached them, on August 7 of that same year, Ianuario Mastrangelo sold the assets of these churches, indeed, even the patronage rights themselves. A dispute ensued, with Ianuario Mastrangelo requesting absolution from censures, as well as confirmation of the patronage, or at the very least, a new concession, while the parish priest of the Church of the Lauretana Virgin vehemently opposed this. The arguments presented were as follows:

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ARGUMENTS PRESENTED BY IANUARIO MASTRANGELO:

The petitioner maintained that the patronage should be maintained, or at least a new concession granted, based on: 1. legitimate succession to the patronage, 2. the construction and endowment of the churches, 3. the great benefit that these churches provide. Addressing the first point, he recalled the well-known legal principle that "Patronage legitimately possessed passes to the buyer, whenever the assets to which it is attached are sold, and the price for the transfer of ownership is not increased; Cap. cum saeculum 13 de iurepatr. Barbosa Collect, in Cap. 600, letters 7 de iurepatr., no. 5; Gagliardi de iurepatr., book 3, chapter 14, § 7. In...

[*Latin ed. p. 227*]

Having done this, it is certain: that the Pignatellis were, as legitimate possessors, the true holders of the patronage rights, and that they transferred these rights to the Churches in January, without the price of the patronage rights attached to the goods having been increased. Indeed, 11,000 crowns were paid for this purchase, and these crowns produce annual interest at the rate of one-fifth, amounting to 550 crowns, which clearly represents the income of the goods that were included in the contract. Furthermore, the crime of simony is, in itself, a very grave offense, but it must be conclusively proven. Nor can it be objected that the patronage rights of the abbatial Church of St. Peter, whose goods have completely disappeared, were transferred to the aforementioned Mormile and his successors. For the patronage right, about which the question arose, was not limited to a single abbatial Church, but also included the Churches of St. Mary of Lauretana and St. Mary Crowned. Moreover, it is not valid to object that the sale by the Pignatellis was carried out without Apostolic permission, and is therefore null and void, because the ownership could not have been transferred to the buyer, Mastrangelo. Since the agreement was strengthened on all sides regarding the acquisition of ownership, and the transfer of the patronage rights, it must be said to be valid. Finally, it is not valid to argue that the principal object of the contract, according to the will of the contracting parties, was the alienation of the patronage rights, because this was the first matter discussed. That which appears first in the document, for the sake of clarity, is not necessarily the principal object of the contract, as can be seen from the very wording of the agreement. For the second part of the argument, the defender drew his demonstration from the phrase "patronage is conferred by dowry, building, and land," showing that the title of dowry and building was present in the matter. Indeed, Mastrangelo endowed both Churches, as he undertook in a notarial deed of August 7th, to bear all the burdens and to fulfill all those things necessary for the

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maintenance of the cult or the upkeep of the Church building itself.

[*Latin ed. p. 228*]

228 From SALERNITANA, it is reported. However, the expenses incurred from January far exceed the income of the funds. The construction is evidenced by the fact that Raphael Mastrangelo, January's uncle, who served as a chaplain for almost 40 years in both churches; for the necessary renovations, structures, and construction works of both churches, he spent the sum of 37,238 livres. Furthermore, January himself, during the biennium 1881-83, contributed approximately 5000 livres for the greater splendor of the churches. To exclude this acquisition from the patronage based on the construction would not be valid according to the decree of ecclesiastical authority. Indeed, it is the duty of the ecclesiastical judge to inquire whether the patron has truly spent his money and whether he possesses the qualities required to be considered a patron. However, once and if all of this is fully established, the patronage cannot be denied, because it is not granted at the pleasure of the judge, but to the benefactor. In short, the decree of ecclesiastical authority is merely a declaration of the law, and there is no reason why a patron should be considered such from the date of the declaratory decree, rather than from the date of the work done for the benefit of the Church. The benefit that the patronage or its maintenance or concession will bring to both churches is demonstrated by the fact that in the Mastrangelo family, a noble and wealthy lineage, true Christian piety is joined. This third point of the defense is proven by the considerable expenses incurred by the Mastrangelo family to further enhance the splendor of both churches, which suggest that an increase resulting from the maintenance or concession of the patronage will follow. January Mastrangelo should not be blamed for the purchase of the properties without the necessary permission. This, indeed, was not done in contempt of ecclesiastical law, but out of pure necessity, and to avert a greater evil.

WHAT WAS OBJECTED: In the manner of a general thesis, it was announced that it can be safely affirmed: the right of patronage, however considered, is in no way held by January Mastrangelo.

[*Latin ed. p. 229*]

SALERNITANA 229: It has been determined that the acquisition was fraudulent; and that there was no reasonable cause for granting the right of patronage. It is easily demonstrated that Ianuarius could not, in any way, have acquired the right of patronage through the agreement of August 7, 1880, both because of the invalidity of the agreement itself, and because of the loss of that right which the authors of Ianuarius suffered, precisely because they usurped and alienated the property of the Abbey. This has been most clearly decreed by the Holy Council of Trent, Session 22, chapter

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11, and Session 25, chapter 9. Such a loss of right is not to be restricted solely to the abbatial Church of St. Peter; indeed, it pertains to the individual itself: which, just as it cannot materially exist in part and not in whole, so too it cannot lose its right in part and retain it in part. Indeed, it is certain that, with regard to the abbatial Church, the right has completely perished, and therefore it can in no way still exist with regard to the annexed churches. Nor is the theory to be invoked in this case that the right of patronage is not admitted in the event of the destruction of the thing to which it is attached, unless that destruction occurs through the fault of the patron. In this case, we are dealing with a patron who, not only did not have the right to the abbatial Church, but also exposed the goods of churches subject to the Abbey without legitimate authority. Furthermore, the purchaser could not have acquired any possession until the rescript of the Holy Penitentiary has been executed. To these matters must be added the defect found in the terms of the contract, namely, that the right of patronage itself was principally and specifically included in the contract; and that it cannot be free from the stain of simony. Furthermore, what is asserted is contrary to truth: namely, that no price was paid for the right of patronage; when it is well known from the testimony of most serious men that the Pignatellios could not have easily found a purchaser for the property if the right of patronage was lacking. Therefore, the legal provisions must be recalled, especially title concerning Simony, chapter concerning the law regarding the right of patronage, number 6, and the Council of Trent, Session 25, chapter 9. Given these circumstances, it must be said that Ianuarius did not acquire the right of patronage through the agreement of August 7, 1880; and it must be said that he was a violent purchaser of ecclesiastical goods.

[*Latin ed. p. 230*]

230 SALERNITANA. It must be inquired whether Ianuarius Mastrangelo acquired the title of patron through a donation or the construction of the church. But concerning the donation, to endow the Church in the legal sense is to assign revenues that are founded and constructed, which are equivalent to those paid to the ministers of the Church, for the purchase of vestments, lights, and other things necessary for worship. Thus, it is stated in the Decretals, in *Quicumque* 30 and in *Filiis* 31, cause 169,7. And if the donation were not sufficient, the one who donates is not made a patron, but only a benefactor of the Church; the Abbot states this in chapter 3, concerning the hearing, on the matter of patronage, number 4; the Glossa states it in the Decretals, in *Quicumque* 30, cause 16, question 7; Garcia, in *De Beneficiis*, page 5, chapter 9, number 52, where he cites a declaration of the Sacred Congregation, which states: "He who donates insufficiently, and the Ordinary judges this to be the case, does not acquire the title of patron, but is considered a benefactor." The same must be said of one who endows the Church, to whom the originally given endowment

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has completely perished. Concerning the builder. The Church is said to be built by one who constructed it with his own expenses and with the consent of the Ordinary, as stated in chapter *Nobis* 25, concerning patronage; Garcia, in *De Beneficiis*, page 5, chapter 9, number 52; Fagnan, in chapter *Quoniam* concerning patronage, number 52, and Pirhing, in the same title, number 8. But if the Church was not completely destroyed, he who repairs it should not be considered to have built it, as the cited Decretals and the Glossa in chapter *Quoniam* concerning patronage state. This is also true even if the Church was successively made new in parts over different times. Azorius, page 2, title 6, chapter 10, question 1; Pirhing, in the aforementioned place. Both the title of donation and the title of construction are distinct from the actual act. Indeed, it is clear that Ianuarius gave nothing to the Churches; on the contrary, he made an existing donation his own through the purchase of goods. It is also clear that he did not build the Church itself, nor did he rebuild a completely destroyed one. However, there is strong doubt as to whether the sum of 37,238 livres, intended for restoring the Churches in a more elegant form and for raising the foundations of the same buildings, belongs to Ianuarius Mastrangelo, the priest.

[*Latin ed. p. 231*]

SALERNITANA, January 23rd, it is reported that a sum was disbursed. It is, indeed, more likely that the aforementioned sum was derived from the offerings of the faithful, since Raphael served as a chaplain for almost forty years. It is certain that very generous offerings were collected due to the large number of faithful present. If, however, it were claimed that Raphael himself bore these expenses, then a serious inquiry must be made into the disbursement of these offerings, since the chaplain administered them arbitrarily, and never rendered any account of them. Furthermore, it is brought to light that a sum of 5000 livres was disbursed from January to May for the embellishment of the churches. For what has been said about Raphael, his father, and the chaplain, applies even more strongly to him who, with reckless audacity, interferes in the administration of offerings, and who, considering other churches, goes so far as to repel a chaplain chosen by the Archbishop, even with an express delegation from the Abbot Beneficiary. Moreover, it is not undeservedly suspected that these expenses also originated solely from the offerings of the faithful, as if from a source. Therefore, nothing remains but for the patronage to be granted by Ianuarius. However, it is far from the point to speak of the extreme generosity required for such a grant; for it is usually granted only to those who are distinguished by Christian piety and zeal for religion, and who possess a burdensome title; Conc. Trid. sess. 14, cap. 12. In this case, the burdensome title is lacking, since Ianuarius has neither given land, nor built, nor endowed the churches; indeed, he has not restored the ancient endowment,

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nor assigned any revenue for expenses, at least those necessary for the divine cult, and for the proper support of the chaplain. Ianuarius has acted in such a way up to now that he demonstrates himself to be unworthy of receiving the honors and rights of a patron. With these and other things more fully presented by those who contend, the case was brought before the court on June 14, 1884, and postponed by a decree.

[*Latin ed. p. 232*]

232. The Salernitan Case. Resuming the discussion of the matter, on the part of Giovanni Mastrangelo, his advocate argued: that it was a matter of great importance that the Mastrangelo family had, for forty years, taken care of the churches of *S. Maria Lauretana* and *Coronatae*. And since the Pignatelli family had recently decided to alienate the assets of these churches, a buyer, with a good heart and a righteous purpose, had acted to acquire the assets of these same churches, specifically under the condition that the approval of the Holy See be obtained. However, since he had waited a long time [for Apostolic permission, and the Pignatellis threatened to sell the assets in any way and to anyone, Giovanni celebrated the purchase contract, believing that sufficient provision had been made for conscience by requesting approval. And if one were to inquire what this Mastrangelo family is like, no testimony contradicts the fact that it is most honorable and distinguished: which has constantly taken care of the temple, and has spent more on its increase and adornment; and which, in the exercise of its patronage, has nothing else in view than the good of the Church. The priest Defalco testifies that the Mastrangelo family has already disbursed several thousand *lire* for the adornments of the church, and for the renovation of the marble floor. Furthermore, it is proven that more than 37,000 *lire* have been spent by Raffaele Mastrangelo for the expansion of such works. Therefore, thirteen hundred and thirty inhabitants of the town appeal to the Most Reverend [judge], that he would please preserve the aforementioned family in the exercise of its patronage. And, the advocate continued, the sum of 37,000 *lire* is not all. Indeed, considering the various legacies and taxes that the Mastrangelo family has paid, it is held that it has disbursed, each year, 848 *lire* or more: which, over 40 years, amounts to 33,920 *lire*. But it is contrary to truth to say that such expenses were made through offerings: since, from the accounts existing in the records, it is clear that...

NEW ARGUMENTS OF THE PATRON.

[*Latin ed. p. 233*]

The sum of 233 *Salernitan* [units of currency] had been paid, the annual offerings collected for the maintenance of the sanctuary having been used for other purposes. He vehemently denied any intention of commit-

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ting simony in this matter, arguing that there was no deceit or contempt involved. Indeed, these two elements are always required for the effect of a penalty, as is gathered from *De Luca, De Alienationibus*, Disputation 51, number 3. Good faith is evident: the buyer had, from the beginning, acted in expectation of the Apostolic approval, and necessity had compelled him to fulfill the contract. Moreover, necessity, especially in matters of canonical law, provides an excuse in human affairs: indeed, when Apostolic approval cannot be awaited, as stated in *De Luca, De Alienationibus*, Disputation 1, number 119. Januarius was unjustly accused of rejecting a chaplain chosen by the Archbishop. He maintained that this could only be understood through a misunderstanding: for some years ago, a priest named Raphael Mastrangelo had been duly appointed as the Rector of *S. Mariae Coronatae*. And even if the Curia had considered that the right of patronage had been extinguished due to abuse, he should still have refrained from making the appointment, because a dispute regarding the right of patronage had been initiated; and nothing should be altered while the dispute was pending. To obtain the grant of the right of patronage, he presented certain arguments, recalling that the Sacred Congregations had not infrequently allowed the buyer to renounce the patronage, under similar circumstances and concurrent conditions: as happened in Macerata, on July 18, 1789, and in Carpen, on January 15, 1815. It is not necessary, in order to acquire the right of patronage, that the same person should donate the land, build, and endow the Church, as stated by Fagnano in chapter *Quoniam de iure patronato*, number 49, which teaches: "To acquire the right of patronage, it is not required that the same person donate the land, build, and endow the church; but it is sufficient that one donate the land, another build, and a third assign the endowment, with the consent of the Diocesan." It makes no difference whether the building refers to a church that does not exist or is completely destroyed: for it is certain that forty years ago, the church of *S. Mariae Coronatae et Lauretanae* was in such a dilapidated state that it was almost in ruins.

[*Latin ed. p. 234*]

234. SALERNITANA. In ultimo loco, admonitorabant, et non poterant accipi quae Episcopus proposuit imponi, scilicet: 1. ut Ecclesia parochialis loci Torchiati a quolibet iure, vel ingentia patroni, immunis declararetur. Siquidem in hac Ecclesia, quae antiquitus titulo SS. Salvatoris et nunc B. M. V. Lauretanae ornata est, parochus semper fuit hospes: et Capellanus qui Ecclesiae rector est, titulo hospitii, annua ducata septem persolvit. Atque si Ordinarii petitio acciperetur, hospes in dominum, dominus autem in hospitis conditionem redigeretur. Neque haec subiectio erga rectorem a saeculis ullam litibus aut dissidiis occasionem praebuit. 2. Multo minus accipi debet quod praetenditur, nempe ut Capellanus Ecclesiae S. M. Coronatae suum emolumentum perceperet ex fundis ipsius sanctuarii propriis,

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et non ex fidelium oblationibus. Etenim bona ecclesiae reditum quotannis suppeditant libellarum 974, sumptus autem summam attingunt libellarum 1822. Si igitur expensae duplo bonorum reditus excedunt, evidentem iniustitiam contineret, reditum ad onera ecclesiarum satisfacienda imparem in annuum Rectoris emolumentum converti.

QUAE CONTRA OPPONEBANTUR. Nonnulla ex adverso allegabantur facta ad arbitrium et exlegem dominatione familiae Mastrangelo in Ecclesiis, de quibus agitur, ostendendum, ut Ecclesia SSmi Salvatoris seu S. M. Lauretanae loci Torchiati a subiectione erga patronum libera omnino declararetur. His utrinque disputatis, propositum est S. C. dirimendum: Dubium An et quibus conditionibus sit locus manutentionis, si minus, concessioni iuris patronatus favore Ianuarii Mastrangelo in casu.

RESOLUTIO. S. C. Concilii in plenariis comitiis diei 16 Maii 1885 responsum dedit: Negative quoad manutentionem; quoad concessionem et gratiam affirmative: suscepta ab oratore obligatione, in forma iuris valida, supplendi de.

[*Latin ed. p. 235*]

SALERNITANA 235, concerning proper expenses for the upkeep and maintenance of the building: and in other cases, according to the form of the law, provided that the verbal agreement is made with the Most Holy.

FROM THESE, THE FOLLOWING MAY BE GATHERED:

I. The right of patronage cannot be acquired by a purchaser of funds which are attached to it, if the seller has lost this right due to his misdeeds against the Church, and especially due to the unlawful appropriation of the Church's property.

II. Nor can the right of patronage be acquired by a purchaser due to the vice of simony, if this was the principal and specific reason for the contract.

III. However, the stain of simony is removed if a just price has been paid for the funds, even if mention of the right of patronage was made first in the instrument.

IV. One can acquire the right of patronage by title of endowment, if he assigns a sufficient endowment for the maintenance of the Church or benefice.

V. The concession of the right of patronage should be granted to those who excel in Christian piety and zeal for religion, even if there is a burdensome title involved.

VI. Good faith is presumed in him who has declared that he will only purchase the Church's property with the intervention of Apostolic approval; and in the meantime, while awaiting the approval, he fulfills the stipulation out of necessity.

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VII. In the case of such a general loss of Church property, the right of patronage was granted by Saint Januarius Mastrangelo only by a burdensome title and by grace, that is, provided that he adequately covers the expenses for the upkeep and maintenance of the building, which corresponds to the burden of the endowment.

ALBEN. SERVICES, July 11, 1885. Session 24, Chapter 12, concerning Reforms.

COMPENDIUM OF THE FACTS: Since the year 1839, the Chapter of the Cathedral has reported to the Congregation of the Holy Council that choral vestments are kept in its church.

[*Latin ed. p. 236*]

236. ALBEN. The vacation was constituted of 480 days, and therefore, considering, as is customary, that each day accounts for 14 days, these vacations would scarcely last 35 days; and this, despite the unfavorable climate and the meager income available. Furthermore, the regulations regarding the days of vacation were so strict that anyone, not firmly established in good health, or who wished to attend the holy sacrifice of the Mass, or who left the house for any reason, or who, following the advice of doctors, sought a more favorable climate, could no longer avoid losing days of vacation. Therefore, from that time on, he advocated that the Holy Congregation might deign to extend the vacations to two months, without altering the distribution according to the existing, time-honored custom. At that time, the chapter consisted of nineteen canons, one of whom, from its foundation, was bound to the choir only on feast days, while another, as if a founder of his benefice, had obtained an exemption from choir service; three were in charge of souls, and two were jubilarians. The Bishop, when asked about the chapter's request, replied: "Although, due to various improvements, the air of the city of Alba is now purer, it still becomes damp in the morning and evening, to the detriment of the health of the citizens. Moreover, since three parish priests are included in the chapter, and those canons who hear confessions within the church are considered present, the service of the choir would easily suffer if the vacations were extended to sixty days. However," he added, "35 days of vacation seem few. If the requested grace is granted, it would seem best to impose on the chapter the obligation of revising its chapter statutes; and that it should no longer use the statutes completed in the year 1449, which cannot be observed in their entirety." Therefore, the following questions were proposed: "I. Whether and how, and for what period, the vacations should be extended in this case. - II. Whether and how a privilege should be granted to the canons to receive their daily distributions during the time of their vacations in this case." The response was: "Regarding I and II, postponed; and the Bishop will first take care to complete, according to the bull of the Most Holy Pope Pius VII, beginning with *Beati Petri Apostoli Principi*, new chapter

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statutes."

[*Latin ed. p. 237*]

ALBA. 237. "According to the canons and the Holy Council of Trent, within six months, they shall be notified, and the case shall be reopened." But, although the reason is unknown, it is certain that neither the Bishop nor the chapter were concerned about complying; and, as the present Prelate explains, "the canons have consistently, in the absence of the chapter, during a specified period of vacation, received their daily distributions, and have even responded annually to false accounts regarding those distributions; and I cannot, with the least censure, reproach the conduct of so many men, whose doctrine and piety are known to be under the guidance of Bishops distinguished by knowledge, zeal, and sanctity; nay, rather, I believe that this practice must be supported by some ancient privilege, or one that has been handed down, or perhaps lost among the many documents that are lamented as lost during the translation of the Diocese of Alba to Asti, during the disturbances that afflicted the subalpine dioceses at the beginning of this century." However, under Bishop Eugene Galletti, who approved them on February 18, 1874, statutes were established by the chapter; and, with regard to the present question, concerning the vacations of the canons, the following provision is found: "In order that the divine worship may be promoted more and more, unless there is a legitimate reason, the canons shall diligently observe the laws regarding residence; but, in order to provide for their needs of body and mind, or for any other purpose, it shall be arranged that each canon may, for 40 days, either continuously or intermittently, be absent from the choir, without being subject to the loss of distributions, but with the understanding that they shall be charged with the full amount of 14 points per day, so that 560 points shall be deducted from each." The present Bishop earnestly prays that, for the present chapter, the practice previously expressed regarding the daily distributions of the choir, which has been transmitted without interruption from the elders until now, and which, moreover, is now maintained without hesitation, may be observed for the present and for the future of this cathedral.

[*Latin ed. p. 238*]

238. Regarding the chapter regulations, during the period of vacation, as stipulated in the current statutes, the privilege of receiving the daily distributions while absent should be granted, including those portions that correspond to the annual shortfall. The Ordinary has presented to the chapter many matters concerning the status of the chapter; and those matters deemed worthy of note have been presented to the Most Reverend [Bishop], so that the grace may be more easily and reasonably granted by the Apostolic See. A concise discussion: It has been observed

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that there are still two questions that must be defined: one concerning the increase of days during choral vacations, and the other concerning the privilege of receiving the daily distributions, and even the shortfall, during the period of vacation. Furthermore, concerning the first point, it seems that the Council of Trent opposed this, wishing that "the constitutions of those churches" be preserved which require a longer period of service; and Benedict XIV, in *De Synodo Dioeces*, book 13, chapter 9, paragraph 14. Nevertheless, it is taught that that Tridentine decree should be interpreted more leniently, and that some indulgence should be granted for the recreation of body and mind, where there is a very long and laborious choral duty. This is especially taught by Reiffenstuel, *De Clericis Non Residentibus*, section 4, numbers 119 and 120, and by the Sacred Congregation of Clerics in *Servitium Choralis* in Segni, December 16, 1837, and in other documents, whether in folio or through summaries of petitions. Even more so, because the increase in the number of vacation days is slight, and even more strongly, because special reasons exist, both due to the inclement weather, and due to the ordinary heavy choral service, and finally, due to those matters which the current Prelate has indicated in his letters, concerning the actual state of the chapter. Regarding the reception of the daily distributions, and their increase from the shortfall, there may also be difficulty according to common law: because, according to Fagnanus, in book 3, chapter *Licet de Praebendis*, number 149, and according to accepted discipline, it is not customary for those absent during the period of vacation to receive distributions.

[*Latin ed. p. 239*]

ALBA. 239 [That] they may receive benefits, and all the more so that they may not be admitted to the deceptions of others. However, it is also certain that, under particular circumstances, the Holy See has been accustomed to grant this grace, and Oriolen is an example thereof, on December 6, 1794. If the Most Reverend Fathers [of the Chapter] of Alba deem it fitting to grant an extension of vacations and the distribution of benefits therein, they will also decide whether it is expedient to impose these canonical obligations, especially the obligation not to be absent on all feast days; these obligations, which the Holy See sometimes permitted to be imposed, and sometimes forbade, according to the circumstances and prudent judgment, are demonstrated by the case of Vahen, cited above, the Indult of absence granted by Caserta on December 16, 1797, and others. Indeed, in Osimo, on July 12, 1631, the Holy See decreed: "The Ordinary must decree that in the collegiate churches of his diocese which enjoy, by virtue of the Council of Trent, a vacation of three months, the canons may not be absent for more than one-third of that time, and that such a vacation must not occur during the seasons of Lent and Advent, nor during the major feasts of the year."

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Having considered these matters, the following questions were proposed: I. Whether and how, and for what period, the vacations should be extended in this case. II. Whether and how it is permissible for the chapter members, during the time of their absence, to receive the privilege of collecting daily offerings in this case.

RESOLUTION. The Sacred Congregation, having considered the matter on July 13, 1885, decided to respond: "To I. Affirmative, according to the constitutions of the chapter; and according to the precedent of Osimo, of July 12, 1631. To II. Affirmative."

[*Latin ed. p. 240*]

240 PAMPILONA. A QUERY CONCERNING FEES FOR THE EXECUTION OF DISPENSATIONS. April 18, 1885. Through summary petitions. A SUMMARY OF THE MATTER. The Bishop of Pamplona in Spain stated: "According to a very ancient custom in this diocese, petitions for matrimonial dispensations are never sent to the Dataria [office for processing documents] or the Penitentiaria [office for handling matters of penance], unless there has been an inquiry into the truth of the circumstances, so that, once the dispensation is obtained, it is not necessary to institute that inquiry, except in some singular and extraordinary case. It was also the custom in this diocese that the Vicarius generalis [general vicar] would receive, according to a prescribed tariff, a fee of four silver coins (reales de vellón) for the aforementioned inquiry, and for the testimonies which are presented in the higher grades to demonstrate the truth of the facts to the Congregation to which the petitions are sent, six silver coins. However, for the execution of the apostolic letters, absolutely nothing was received by the Vicarius generalis." "Thus, the situation was when the resolution of the aforementioned Sacred Congregation was issued on January 28, 1882, which completely prohibits those who execute dispensations from receiving anything (1). The Vicarius generalis, who was then in office, considered that this prohibition did not affect the aforementioned practice, since he was not acting as an executor of the apostolic letters when he obtained information and presented testimony in the case, but rather as a judge, or under some other title. However, when he was executing the apostolic letters and fulfilling the mandate entrusted to him, he received absolutely nothing. The current Vicarius generalis, however, does not dare to receive anything from the inquiries and testimonies that precede the petitions and the dispensation (1). "

(1) You have this question on page 353 of the same volume. Vol. XV, page 111. Also, see Cameracen.

[*Latin ed. p. 241*]

PAMPLONA. 241 tion, because this circumstance appears to be accidental, stemming from custom or the law of this diocese. "Therefore,

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the Bishop, writing, inquires: whether the prohibition against receiving payment from executors of apostolic dispensations also includes information gathered to formulate prayers and testimony regarding the truth of such prayers, in order to prevent the dispensation from being granted, but rather to obtain it; and, to the extent that the answer is affirmative, he requests that you deign to provide a suitable remedy for actions already taken." 1. A Synoptic Discussion. It should certainly be stated that such a case is not included under the precept given to apostolic executors, namely, that they should receive nothing from their work, if we consider that the actions undertaken by the Ordinary are not the actions of the executor, and consequently cannot fall under the precept that governs the conduct of these executors. Moreover, the law cannot be extended from case to case in matters that are odious. Indeed, it is true that the information gathered by the Ordinary is often of such a nature that it supplements what the executor would subsequently have to do. However, this would seem to be something accidental: firstly, because someone else could be delegated by the Vicar to perform this task; secondly, because further information might still be necessary after the apostolic letters have been received; and finally, because the prior inquiry is made to provide testimony regarding the truth of the prayers; not to implement the grace, which does not yet exist, and which could even be denied. PRACTICE THAT SHOULD BE FOLLOWED. PRACTICE THAT SHOULD BE REPROBATED. It must be considered, on the contrary, that if the practice in the Pamplonese diocese were to be considered unusual, the law, which prohibits executors from receiving any emolument, would become almost useless, indeed, almost a mockery. For, the Vicars General, acting first, would be held to do what they are subsequently to do (at least with all probability, according to current practice), thereby circumventing the rigor of the law, receiving emoluments, and thus, in the meantime, the purpose of the law would seem to be frustrated. Acts, Vol. XVIII, page 60IX. 16.

[*Latin ed. p. 242*]

242 PAMPILONEN. And this appears more clearly if one considers that such practices, whether undertaken previously or subsequently, always tend towards a single and the same end; and it is now plainly known from what causes the grace of dispensation is granted, and to which persons the execution of graces is commonly entrusted. Therefore, with this practice admitted, a path seems to be opened to evade the law enacted for the public good, and to revive those evils and inconveniences which the law itself was established to prevent. Indeed, this practice would seem to be condemned by both the spirit and the letter of the Innocentian law, whose prescriptions, at least as an explanation of the law, hold considerable value, even outside of Italy. With these things noted, the question was raised as to what should be answered to the Bishop's petition. RESOLUTION. After discussion by

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the Sacred Office on April 1, 1885, it was decided to respond: Negatively. FROM WHICH IT IS UNDERSTOOD I. Nothing is included in the prohibition of demanding anything for the execution of dispensations, but rather, something is received beforehand, both for the information obtained to formulate prayers, and for testimony regarding the truth of the matter in order to obtain the dispensation. II. Those acts completed before the dispensation is obtained cannot fall under the law, which regulates the actions of the executor; because at that time the Bishop does not act as the executor of dispensations, while the law directly concerns the executor of the apostolic letters; nor can it be extended from case to case in an arbitrary manner; because arbitrary actions must be restricted. TARNOW. MARRIAGES. On September 19, 1885. Between Helena, a girl of 20 years, born in Zagaj, in the Russian Empire, and Anthony, from Przybsz, of the diocese of Tarnów, in the Austrian Empire, who were married on February 7, of the year 1880, in the parish of St. Stephen, in the church of P. Cap. SUMMARY OF THE FACTS.

[*Latin ed. p. 243*]

TARNOVIEN. In Cracow, 243 young people were married according to the Catholic rite, to the mutual joy of both parties. However, the outcome of this marriage was unfortunate; for, according to the sworn testimony of both spouses, the husband was never able to consummate the marriage, not even once, during the five months of their married life. From this, discord arose, and mutual love began to cool. Then the wife returned to her parents' home, and finally, it was decided to bring the matter before the civil court of Tarnow for a divorce. This lawsuit was actually initiated by the parents of Helena, after Helena had been examined by two doctors, and found to be a virgin. The court of Tarnow, after questioning two other doctors, and after carefully considering the matter, issued a judgment declaring the marriage to be null and void due to the husband's impotence. This judgment was then confirmed by the appellate court of Cracow, and finally by the supreme court of Vienna. Having obtained these three judgments, the woman appealed to the episcopal court of Tarnow, in order that the nullity of the marriage, decreed by the secular courts, might be confirmed. After hearing the woman's plea, the Bishop presented a petition to the Most Holy Prince, requesting that he graciously grant a dispensation regarding the initiation of a new ecclesiastical process, and regarding any deficiencies in the evidence presented, and that he might most graciously decree the nullity of the marriage, based on the evidence presented. However, the Most Holy Prince only granted this insofar as a new physical examination of the spouses was not required, and that the medical testimonies presented for the civil judgment could be used in the ecclesiastical process, and if possible, that the doctors be sworn to confirm their previous testimonies before the ecclesiastical court; in all other respects, the process would pro-

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ceed according to the law. Thus, the process was initiated, and in addition to the doctors, both spouses and a seventh witness were heard, and after everything was completed, a judgment was issued, which pronounced the nullity of the marriage. From this judgment, the diligent defender of the marriage considered it advisable to appeal to the higher court of Lviv.

[*Latin ed. p. 244*]

244 TARNOVIEN. But when the woman petitioned the Curia, so that the Holy Father might pronounce either the nullity of the marriage or a dispensation from the marriage, which was valid but not consummated, the cause was brought before the Sacred Congregation, so that it might be examined under both the doubt of nullity and the doubt of dispensation. DEFENSE OF THE WOMAN PRESENTED TO THE SYNOD. The advocate chosen by the woman, in the first part of his argument, having first defined impotence, which is the ineptitude or inability of a man or woman to consummate carnal copulation, and having noted that impotence, whether absolute, or relative, or natural, or accidental, if it is antecedent and perpetual, renders the marriage invalid both in natural and ecclesiastical law, he argues that the marriage is null and void, because the impotence from which Anthony suffers is antecedent and perpetual, and therefore incurable. To prove the impotence of the man, he first presents the sworn testimony of Helen, who, when questioned by the judge concerning the matter, replies: "We were in the same house, in the same bed, in the same room," but there was no carnal union and no consummation of the marriage. "There were attempts... He showed his impotence; he made attempts, but when he could not, he cried out: 'I want to, and yet I cannot,' even though he wanted to... The erection was sometimes too weak; at times, there was absolutely no erection." Helen's confession, he says, is confirmed by the sworn testimony of Anthony himself, who, when questioned by an ecclesiastical judge as to whether they had consummated the marriage, among other things, replied: "No; there were only attempts, and although there was an erection, at the moment of approach and contact, it ceased." Finally, when asked whether this impotence was present during all the attempts, he replied: "Yes, during all of them." He further urges that this is also confirmed by seven parents or relatives, who attest to the veracity and integrity of the spouses, especially of Helen.

[*Latin ed. p. 245*]

"TARNOVIEN". 248 This is confirmed by the public voice and the reputation of several men of outstanding integrity. Finally, Anthony's impotence is demonstrated and corroborated by the state of virginity, in which, after the nuptial experiment, a woman was found to be a virgin, both by expert medical witnesses and by judicial ones. Indeed, the expert medical witnesses testified: "From these aforementioned signs, with all cer-

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tainty, it must be affirmed that in the lady Helen Chwalibog Broniewska, there exists complete physical virginity." The medical experts summoned by the secular tribunal deposed: "Regarding 1. Lady Helena de Chwalibog Broniewska is in a state of virginity, which is proven by the intact vulva of a virgin (hymen)." Regarding 2. Since Helena's virginity is established, we firmly conclude that Mr. Anthony Broniewski was not able to fulfill his marital duty. From all of this, there is no room for doubt concerning Anthony's impotence, and consequently, the nullity of the marriage, the advocate affirms. Indeed, he proves that the impotence preceded the marriage, both because it became evident on the very first night of the marriage, and because the cause of this impotence was venereal diseases, with which Anthony had been afflicted since his youth. Moreover, the perfect and complete conformation of the body of the man reveals this. Since it is understood that the interpreters of the sacred canons have always considered the external appearance of the penis and the apparent health of its parts as an argument for virility, because the cause that prevents it is not known by the eyes or by touch, but is known by the effect, namely, the experiment of the nuptial chamber. In this matter, he cites Coscii de separ. thori, Hh. 3, cap. 2, n. 298. The Sacred Congregation of Nullities or Dispensations in Naples, April 24, 1858, §. He states that this impotence is incurable and therefore permanent, both because he has used many remedies without ever being able to recover his health; and also because of the testimony of expert witnesses, both extrajudicial and judicial.

[*Latin ed. p. 246*]

246 TARNOVIEN. Regarding the matter. Indeed, before the ecclesiastical tribunal, it has been established that the impotence of Anthony Bronietaski, with respect to his wife, is absolute, incurable, and perpetual. Therefore, the advocate concludes, from what has been explained thus far, it is manifest that Anthony is impotent, and that his impotence preceded the marriage, and that he cannot be healed in the future, and therefore, it is to be judged that his marriage is, as it were, null and void from the beginning. Having addressed the arguments concerning the nullity of the marriage, he proceeds to another point, concerning a dispensation for a marriage that is valid but unconsummated, noting that two things are required for such a dispensation, namely, that the consummation of the marriage has been lacking, and that there are sufficient reasons for granting this grace. Furthermore, he asserts that the lack of consummation of the marriage can, in no way, be doubted, based on the arguments presented above. Nevertheless, to further strengthen his argument, he observes that the oath of the spouses is to be held in high regard in such a case. Although the text in Chapter [reference], title [reference], concerning him who has knowledge, teaches that the testimony of the spouses alone is not sufficient, it nevertheless gains great strength if the oath is added, in which the spouses

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pledge their faith and truthfulness, and are confirmed by the hand of seven relatives, from Chapter [reference], § [reference]. Furthermore, from [reference], concerning coldness, malice, and from Chapter [reference], title [reference], he argues that, as Ursaya states in *Disputationes Ecclesiasticae*, volume 3, part 2, discourse 21, number 138, the oath of the spouses, combined with the hand of seven relatives, is sufficient to prove the lack of consummation of the marriage, even without a physical examination. However, he emphasizes that not only have Anthony and Helen sworn that the marriage has not been consummated; not only has the hand of seven relatives confirmed this oath, commending the truthfulness and faith of the spouses; but also, and this is more important, expert physicians, whether extrajudicial or judicial, after a thorough examination of the woman's body, have unanimously testified to this fact. Therefore, he contends that the lack of consummation of the marriage in this case is to be considered certain.

[*Latin ed. p. 247*]

"TARNOVIEN". 247 After having instituted a discussion concerning the reasons for the dispensation, the advocate noted that a serious reason was required when one of the spouses requests a dispensation, while the other resists, so that the effect of grace may be experienced even unwillingly. On the contrary, if both are inclined towards dissolution, there have been doctors who believed that grace could be granted even without another cause; but all agree that, whatever the reason, as long as it is not incongruous, it suffices. Cosci, *de separ.*, book 3, chapter 2, number 94 and following. The reasons presented in this case, he says, are among those that would entirely suffice, even if one of the parties resisted the dispensation. Furthermore, he adds that, in truth, there is not a slight doubt, but a very serious one, indeed, clear evidence of the husband's impotence. He derives the fact that probable impotence is a just cause for a dispensation from Cosci, book 1, chapter 16, number 197, and book 3, chapter 2, number 386. Sánchez, book 2, dispensation 16, number 6, Pignatell, *consult.*, 148, number 14, volume 4, Cardinal De Luca, *disc.*, 7, number 7, *de matrim.*, and the *S. H. C. in Neapolitana* concerning nullities or dispensations of marriage, July 5, 1862, §. Causes, are in agreement. He also asserts that another reason, no less serious, is present, which consists in the dissociation and aversion of the parties. Indeed, he states that aversion arising from both sides constitutes a just reason for a dispensation, citing Corrad, *in praxi dispensat.*, book 8, chapter 7, §. 3, near the end. The aforementioned *Neapolitana* of July 5, 1862, §. Third, also confirms this. Finally, the third reason he presents is the danger of incontinence and fornication on the part of Helen, who, as reported by the Bishop of Tarnoviae: "has declared that, unless she obtains the faculty of contracting a legitimate and sacramental marriage, she will be exposed to prolonged delays in the process of marriage through the civil marriage, and will be led to a second marriage." He teaches that this

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reason is sufficient to obtain the dispensation, citing the opinion of many canonists, whom he quotes in book 1, chapter 16, number 250. Therefore, since the preceding and perpetual impotence of Anthony is clearly evident, the marriage is null and void.

[*Latin ed. p. 248*]

248 TARNOVIEN. He concludes that a patron must be appointed, or, at the very least, that the grace of a dispensation must be granted, since the consummation of the aforementioned marriage is entirely lacking, and suitable and grave reasons for granting a dispensation are present. OBSERVATIONS OF THE DEVOUT DEFENDER OF THE SACRED BONDS. He maintains, with all his strength, that the marriage must be declared valid, because the impotence of Anthony, which has been so greatly emphasized, is clearly not proven. Indeed, says the defender, the three archiaters who examined his body not only fail to present certain signs of impotence, but they bring forth arguments that do not deserve to be disregarded, since the first two assert that: "Given the age of Mr. Anthony Broniewski, as well as the condition of his health and the formation of his genital organs, we cannot consider him absolutely incapable of intercourse." The third, namely Lorenteski, while testifying under oath, states: "The constitution of his body (Anthony's) was robust and healthy; hence he was called 'of strong constitution'." However, the judgment of the aforementioned two experts is that: "In Mr. Anthony Broniewski, the power of coition appears to be lacking by nature and, with respect to his wife, is absolutely absent," a judgment that must not be given any weight, because this judgment contradicts the aforementioned doctor Lorenteski, who, when questioned by the judge about Anthony's ability to have intercourse, replied: "I was convinced that he was, at that time, capable of performing the conjugal act." Nor do the aforementioned two experts deserve greater credence when they claim that the disputed impotence preceded the marriage, both because their assertion contradicts the aforementioned response of the doctor Lorenteski, and because they also demonstrate that the arguments of their profession are lacking in proving their assertion, resorting to specious reasons. Furthermore, the first reason presented by them is specious, namely, that when (Anthony) was summoned to the trial, he did not even once insert his penis into the vagina of the actress, from which they deduce that the actress received it from someone else, which Anthony denies. Nor is the second reason dissimilar.

[*Latin ed. p. 249*]

TARNOVIEN. 249 concerning the lack of consummation due to the virginity of the female spouse; for, he says, the integrity of Helen, if it truly exists, does not immediately imply that the fault lies with the husband's impotence. What is said concerning impotence existing before marriage, the

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same must be asserted regarding another essential condition of impotence, namely, its permanence; since the physicians among themselves disagree and are discordant. Indeed, on the one hand, two experts assert: that the impotence of Mr. Anthony Broniewski in relation to his wife is absolute, incurable, and permanent; on the other hand, the physician Lorenteski, when questioned, does not hesitate to answer: that the impotence is relative and curable, and that if there were a woman who was more active than passive in the marital act, Anthony Broniewski would undoubtedly consummate the carnal act, if not at first, then at least later. Given such a discrepancy among the physicians, it is necessary to remember what De Luca states in *Discourses*, 33, n. 20, concerning experts, namely, that experts are usually employed either as witnesses or as advisors. Indeed, if the physicians are employed as witnesses in the case, little or nothing should be trusted in their testimony, because, as it is well known, contradictory witnesses tear each other apart and undermine each other; therefore, a physician who proves nothing is like a witness who proves nothing. But if the physicians are employed as advisors, the judgment of two experts is subject to many exceptions. Namely, 1. they did not separately, but collectively, perform the physical examination; 2. a written report of the completed examination is lacking, since in the records there are only some added responses, contrary to the Instruction of the Holy Office of August 22, 1840, which states: "Each expert should separately examine the body of the man in whatever way it can be done, and after performing experiments, which are appropriate according to the art, but not illicit, each should write a written report."

[*Latin ed. p. 250*]

250. TARNOVIEN. The defender, proceeding further, asserts that the causes of impotence assigned by the aforementioned two physicians are not sufficiently conclusive, since it is certain in law that impotence is not caused by every syphilitic disease, nor by an excess in the consumption of strong liquors. Indeed, he adds, the physician Lorenteski expressly testifies: that the syphilitic disease rather diminishes the power of procreation than the power of coition. Regarding drunkenness, he observes that the opinion of the doctor is this: that drunkenness in general adversely affects the power of coition; but in this particular case, the doctor did not affirm that the drunkenness to which Anthony is accustomed has rendered him impotent, but only that it may have weakened the power of coition. Furthermore, the defender continues, the testimony of Feliks Bukowski is wrongly cited, who asserts that the doctors of the public hospital of Tarnovia examined Anthony and testified that he was completely impotent; since, contrary to what is stated, when the aforementioned doctors were questioned about this matter, they were not asked about the man's impotence, but about the matter, it is urged that such a deposition should be disregarded. Finally, the defender contends that Anthony's impotence is wrongly proven by

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public opinion and reputation, both because two witnesses, Bukowski and Kepinski, when questioned about the lack of consummation of the marriage, did not speak of the man's impotence, and because the witness Sottykowski, when questioned about public opinion, responded that the cause of the disagreement had given rise to astonishment. However, the defender observes, there would be no reason for astonishment if the man's impotence were known. But neither is the lack of consummation of the marriage sufficiently proven by the arguments presented. Indeed, the argument derived from the confession of Helena is extremely doubtful, because her confession should be considered suspect, since she herself has instituted proceedings against the marriage. He believes the same should be held regarding Anthony's confession, both because, by sending a messenger to summon the court, he did not, as he should have, defend the marriage; and because, by asserting that the marriage was not consummated, it does not seem to him that he has sufficient grounds; indeed, when asked: "Was there an emission?" he responded:

[*Latin ed. p. 251*]

TARNOVIEN. 251 At the very beginning of the trial, there was a lack of evidence; later, there was some, but I doubt whether it penetrated the inner sanctum. Indeed, he presents two witnesses, one of whom testifies that he heard from Anthony: "all is well"; the other, that he had "fulfilled his duty well." Regarding a third argument, or rather, an investigation carried out by judicial doctors on the woman's body, the defender first objects that the prescribed warm water bath was not administered; nor was the examination performed separately by midwives, and in the presence of an honest matron, but rather by the doctors themselves. And this is not enough; but, he says, among the documents of the process, one can find an explanation of the report presented by experts before the secular court, but it is useless to seek the report itself, by which the experts, according to the instructions of the Sacred Congregation, should have reported on the state in which the woman was found, and whether any deception could have been used to simulate virginity. But does this difficulty not seem to be resolved by the report written by two doctors after an examination ordered by the father of Helena? For this expert examination, besides being lacking in many precautions, is extrajudicial and not supported by the doctors' oath. All of this, he says, contradicts the decree of the Sacred Congregation of February 4, 1884, according to which, from the civil court to the ecclesiastical court, not only the aforementioned answers and explanations, but especially the written report, which the judicial experts deposited there, were to be sent, and the extrajudicial experts were to be questioned under oath. From all of this, he concludes that the lack of consummation of the marriage cannot be proven, 1. from the arguments presented to demonstrate Helena's physical virginity, because these arguments are not such as to exclude all possibility

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of error; nor 2. from the alleged impotence of Anthony, about which no certain judgment can be made until a written report is presented, which the judicial doctors who examined Anthony's body have produced. Regarding the reasons presented to obtain the dispensation, he warns that there is no need to dispute them, because, as it should be, it is not established that there was a lack of consummation. But...

[*Latin ed. p. 252*]

252 TARNOVIEN. And disregarding this, he asserts that the alleged reasons are to be considered insignificant, because, although they may seem suitable in law, they are not certain in fact. Indeed, regarding the alleged impotence of the man, even granting that: "When impotence is presented as the reason and cause for a gracious dispensation, it does not require certain and conclusive proof," he believes that this opinion is not applicable, as long as there is doubt about the impotence, and as long as the means employed to ascertain the truth are not considered adequate, that is, as long as the doubt is surmountable. Regarding the second reason, which consists of aversion of affections, the defender, following Pyr. Corrad. *Praxis dispensat.*, book 8, chapter 7, number 33, *prop. fin.*, observes that aversion of affections is to be considered when it is 1. grave, so that serious discord, serious disagreements, and extreme hatred already exist between the spouses, in Orte; and 2. implacable, or without a probable hope of improvement; so that serious and grave scandals may reasonably be feared among them and their relatives. Furthermore, it appears from what is contained in the records that, if any aversion of affections exists between Helen and Anthony, it is neither grave nor implacable. Moreover, regarding the third reason, namely the danger of incontinence on the part of the woman, it must be demonstrated, unless the existence of the first or second reason is established. Indeed, if Anthony does not suffer from impotence, and if the aforementioned aversion of affections is not grave and implacable, then Helen may and should be exposed to the danger of incontinence, not through other marriages, but through cohabitation with her legitimate spouse, Anthony Broniewski. With these things noted, the following propositions were presented: I. Whether the nullity of the marriage is established in this case. And to the extent that the answer is negative: II. Whether it is necessary to consult with the Most Holy [Congregation] regarding a dispensation for a marriage that is valid but not consummated in this case. RESOLUTION. The Holy Congregation, after deliberation, decided [on a specific date].

[*Latin ed. p. 253*]

TARNOVIEN. 253, 19 September 1885, responded: – Regarding the first point: This will be addressed in the second. Regarding the second point: Affirmative, it is forbidden to a man to enter into marriage without the

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consent of the Congregation. FROM WHICH YOU MAY GATHER: I. To grant the grace of a dispensation, two things are required: namely, that the marriage be valid but not consummated, and that there be just causes present. II. To obtain certainty regarding the lack of consummation of the marriage, it is of the utmost importance to present a report, after a thorough examination of the woman's body, from knowledgeable physicians. III. Indeed, a sworn confession from the spouses, accompanied by the testimony of relatives, may suffice to prove it, even without a physical examination. IV. The cause for granting a dispensation must be grave when one of the spouses requests it, while the other resists; but no cause, or at least a cause lighter than any, will be admitted, provided it is not incongruous, when both spouses desire the dissolution. V. Doctors commonly teach that probable impotence, and even more so certain and evident impotence in itself, is sufficient to obtain a dispensation. VI. Especially if aversion, or fear and danger of fornication, exists, with the risk of the death of the soul of one or both spouses. VII. In this case, a dispensation was granted, because the lack of consummation of the marriage was proven by the confession of the spouses, as well as by the testimony of witnesses and the judgment of those who knew them; and because just causes for granting it do not seem to be lacking. FROM 8. CONGREGATION OF BISHOPS AND REGULARS, NARNI, CONCERNING THE MODERATION OF RESOLUTIONS REGARDING THE PROFANATION OF THE CHURCH. February 6, 1885. SUMMARY OF THE FACTS: The Chapter of the Cathedral of Narni ceded a certain building to a Brotherhood, in exchange for a small annual payment. The Church of St. John, which belonged to the same Chapter, was also involved.

[*Latin ed. p. 254*]

254 NARNI. Regarding this matter: The Brotherhood abandoned that church, because it was ancient, dilapidated, and inconvenient to them; and they chose another church for the performance of their sacred functions. Then, the brothers of this confraternity requested permission to redeem the small canon, paying the sum in full at once, which would equal its value. However, the matter was doubtful, whether this permission should be granted. The Eminent Judges responded: Negatively, and with the understanding that the Ordinary should admonish the confraternity regarding the obligation of maintaining the ancient church, so that the offense of profanation might be removed. The decision of the Sacred Congregation regarding the canon became final; but the brothers, observing that it was a grave burden to maintain the church, which was entirely dilapidated by age, inconvenient due to its location, and unsuitable for the performance of sacred functions, requested that they be relieved of this obligation. The Chapter of the Cathedral opposed this request, while the Ordinary favored it. A summary of the discussion: RIGHTS OF THE CONFRATERNITY.

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It was considered whether there were legitimate reasons that would allow the confraternity to withdraw from the divine service of the aforementioned church. And to demonstrate this, the brothers stated that they had not neglected to carry out the necessary repairs to the church of St. John in due time, and therefore, the current condition of that church, which is truly miserable and unsuitable, could not be attributed to the fault of the confraternity. Furthermore, carrying out new repairs to the church would not provide an effective remedy; for this has been attempted before, but unsuccessfully; for the rainwater causes such damage to the walls, due to the church's unfortunate location, that no repair can be effectively carried out. Therefore, it would seem better to withdraw the church from divine service, lest it be exposed to further profanations of the House of God. Moreover, the brothers stated that, in many instances, the building has been used as a lodging for soldiers passing through the city of Narni, both during the full civil authority of the Pope, and in these present times, in which the Pope remains unjustly deprived of his civil authority. The difficulty of maintaining the same church, as a sacred and dedicated place, increases daily, the brothers say, because of the ever-decreasing number of priests, so that the confraternity itself is unable to have a priest to fulfill its own obligations.

[*Latin ed. p. 255*]

NARNEN. 20S Moreover, even the sacred canons do not deny Bishops the faculty of converting churches that have fallen into disrepair for profane uses; as is made clear by the Council of Trent, Session 21, chapter 7: ”Since it is also very important to ensure that those things which are dedicated to the sacred ministry do not become obsolete through the ravages of time, and fall from human memory, Bishops, even as delegates of the Apostolic See, can transfer simple benefices, even judicial offices, from churches which have collapsed through age or other causes, and which, because of their poverty, cannot be restored, after consulting those whose interests are involved. And if all are suffering from extreme poverty, they may be transferred to the parish church or to a nearby church, with the faculty to convert such parish churches, as well as other ruined churches, for non-scandalous uses, provided that a cross is erected there....” It is left to the judgment of the Bishops, as determined by the canonists, to decide when decaying churches can be converted into private homes or public places for non-scandalous uses; Lucidi, in *De Visit., sacrorum liminum*, Volume 1, article 1, concerning the repair of churches, when speaking of the remedies proposed by Benedict XIV, *Instit.* 100, under number 49, says: ”Besides these, other remedies are also available, which can be obtained through the help of the Holy Congregation; namely, the suspension of chaplaincies, as in Tivoli, February 17, 1816; the imposition of a census on the goods of the church in Forlivia, January 13, 1789, and also the reduction of Masses in

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Velletri, Suspension of Masses, September 18, 1790. When, however, the remedies thus far indicated are in no way available, then it is possible to consider the demolition and removal of churches, chapels, and altars. But in this matter, Bishops should proceed with caution, so that the divine worship may not suffer, following the example of the Holy Congregation... in Ravenna, July 29, 1775; in Ariminum, *Commutationis voluntatis*, December 21, 1775; and in Iesi, *Demolitionis*, August 12, 1780, where the case concerned the demolition of an ancient temple...." Therefore, by law, the faculty of profaning churches is not denied, provided that just causes are present; for in Ravenna, July 2, 1775, the Sacred Congregation noted: "And indeed, if other circumstances urge the demolition, it is not uncommon for the Sacred Congregations of Immunitates and Bishops to order that churches be demolished."

[*Latin ed. p. 256*]

256. NARNIEN. Although these churches are well and decently constructed, and require no repairs, as is testified by Cardinal De Luca, in *Disputationes*, section 17, addressed to session 21, chapter 7, of Trent (Trento). In this place, the Canonist Emus lays down the principle by which such matters should be regulated: "Due to the age, and sometimes the poverty, or the indecency, of churches, it sometimes happens that they cannot be restored, or reduced to a more decent form; it has been wisely and very commendably provided in this decree, that • they should be profaned, and, once profaned, destroyed, or applied to other uses, by transferring the endowments, or chaplaincies, or the obligations of Masses, to other prominent, or to parish, or, respectively, to the mother church or the larger church, according to the quality and circumstances of each case." This practice is confirmed by the document of Terracina, dated April 14, 1764, issued by the Sacred Congregation of Councils; in which, regarding the doubtful matter: "Whether there is a place > for the profanation of the rural church of St. Nicholas of Bario by the Monials," the response was affirmative, "according to the vote > of the Bishop." With these, and other considerations, the following matter was proposed: Whether and how to respond to the petition of the Confraternity regarding the removal of the burden of maintaining the cult in the church of St. John in this case. RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after deliberation on February 6, 1885, decided to respond: Negatively, and with the understanding: that the aim is to consult about the better way in which this can be done, at the discretion of the Bishop. However, the members of the confraternity obtained a new audience, in which the following matter was proposed: Whether and how to confirm or revoke the resolution of February 6, 1885, in this case. On September 25, the Sacred Congregation decided to respond: That it is necessary to depart from the previous decisions, and that the Bishop should have the power, if and to

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the extent that he judges it to be so in the Lord, to decide on the suppression of the church, with due regard to the rights of the Chapter, derived from the convention, and with the reservation of Apostolic approval in the case of alienation.

[*Latin ed. p. 257*]

257 ENCYCLICAL LETTERS of His Holiness Pope Leo XIII, by which an extraordinary Jubilee is proclaimed. LEO XIII, POPE. TO OUR VENERABLE BROTHERS, GREETINGS AND APOSTOLIC BENEDICTION. As We have already decreed, by the authority of the Holy See, once and again, that the sacred year should be celebrated throughout the Christian world outside of its proper time, offering the treasures of heavenly gifts for the good of all, which are within Our power to dispense, so it pleases Us, with God's favor, to decree the same for the coming year. — The utility of this matter cannot escape you, Venerable Brothers, who are well-versed in the times and customs; but a certain special reason makes it seem that in this Our plan there is a greater opportunity, perhaps than in others. — For, as We have taught in a preceding Encyclical concerning the states, it is now understood how important it is for them to adhere to the Christian truth and form; and therefore, it is entirely fitting to strive, by whatever means We can, to encourage men to Christian virtues, or to bring them back to them. For a state is, as it were, formed by the morals of the people; and just as the goodness of a ship or a building depends on the goodness of its individual parts and their proper placement in their respective locations, so too, the course of public affairs cannot be right and without offense, unless the citizens follow the path of a righteous life. Civil laws themselves, and all those actions that constitute public life, arise from men, and they perish with them; but men often give to these things the expressed image of their own opinions and morals. Therefore, that Our precepts may be deeply ingrained in the minds of men, and, above all, that the daily life of each individual may be regulated, it must be ensured that each person is encouraged to think and act Christianly, both publicly and privately. And in this matter, greater effort must be made, inasmuch as many dangers threaten from all sides. For it is not a small thing that the virtues of our ancestors have diminished: the lusts, which have of themselves the greatest power, seek greater license; the madness of opinions, unrestrained by any or very few restraints, flows forth daily further and further; and even among those who think correctly, many act rashly.

[*Latin ed. p. 258*]

258 Certain individuals, deterred by a certain shame, dare not freely express what they feel, and even less so, to put it into practice. The pernicious influence of examples on the morals of the people is widespread. Societies of men, not of good repute, which we ourselves have designated as such,

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impose the most flagitious arts and sciences upon the people, and strive, as much as they can, to draw them away from God, from the sanctity of offices, and from the Christian faith. Therefore, considering so many evils pressing upon us, which time itself will only make worse, no opportunity must be neglected which offers some hope of improvement. With this purpose and this hope, we are about to announce a holy Jubilee, exhorting and encouraging all those to whom the salvation of their souls is dear, to gather themselves together for a time, and to direct their thoughts, which are sunk in the earth, towards better things. This will be salutary, not only for individuals, but for the entire republic, because the more each individual progresses in the perfection of his soul, so much more will honor and virtue be added to public life and morals. But you see, Venerable Brothers, that the outcome of this undertaking depends greatly on your works and diligence, since it is necessary to prepare the people suitably and diligently for rightly receiving the fruits that are proposed. Therefore, let your charity and wisdom entrust this task to chosen priests, so that, through pious sermons adapted to the understanding of the people, they may instruct the multitude, and above all, encourage them to repentance, which, according to Augustine, is the daily penance of good and humble faithful, in which we strike our breasts, saying: "Forgive us our debts" (1). We first mention, for a reason, the part of repentance which is the voluntary chastisement of the body. For you know the custom of this age: it pleases most people to live delicately, and to do nothing with courage or with a great spirit. And when they fall into many miseries, they often invent excuses, so that they may not obey the salutary laws of the Church, considering that a burden has been imposed upon them which is too heavy to bear, when they are ordered either to abstain from a certain kind of food, or to observe a fast for a few days. Weakened by this habit, it is not surprising that they gradually give themselves over to their desires, and seek after greater things. Therefore, it is fitting to bring back to temperance those who have fallen, or who are inclined to softness; and therefore, those who are to speak to the people should diligently and clearly teach that it is not only commanded by the Gospel, but also by natural reason, to control one's desires, and to cover them; and that they cannot be expiated except by repentance (1).

(1) Epist. 108.

[*Latin ed. p. 259*]

LETTERS 259 concerning sins. — And it has been wisely considered that, in order for this virtue, of which we are speaking, to remain steadfast, it should be entrusted, as it were, to the stable guardianship of justice, almost as a safeguard and protection. It is easily understood, Venerable Brothers, what this pertains to: namely, that you should persevere in guarding and promoting the Third Order of the Franciscan fraternity, which is called the secular order, in each of your dioceses. Indeed, the examples and the grace

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of Saint Francis of Assisi, who joined to a life of such profound innocence only the desire to correct himself, will be of the greatest value in preserving and fostering the spirit of penance in the Christian multitude, so that he may seem to have presented the image of the crucified Jesus Christ not less in his life and morals, than in the divine signs imprinted upon him. The laws of his Order, which we have suitably tempered, are far from being insignificant; they possess a considerable weight for Christian virtue. Furthermore, in these great private and public needs, since all the resources of salvation are, in truth, found in the patronage and protection of the Heavenly Father, we greatly desire that the zeal for prayer be revived, a zeal joined with constancy and confidence. — In every important matter of the Christian commonwealth, whenever the Church has been subjected to dangers, whether external or internal, our predecessors have admirably taught, with their eyes lifted supplicatingly to Heaven, how and from where one should seek light of mind, strength of virtue, and timely assistance. For deeply ingrained in their minds were the precepts of Jesus Christ: "Ask, and it shall be given you" (1); "Pray always, and do not lose heart" (2). And with this, the voice of the Apostles resounds without interruption: "Pray without ceasing" (3); therefore, I implore all to offer prayers, supplications, and thanksgivings for all men (4). In this matter, John Chrysostom also left a profoundly insightful and true statement: Just as, when a man is born naked and in need of all things, nature has given him hands, by means of which he may acquire the things necessary for his life; so, in those things which are above nature, since he can accomplish nothing by himself, God has bestowed the faculty of prayer, which he should use wisely, and through which he may easily obtain all that is required for salvation. — From these things, Venerable Brothers, you can readily understand how pleasing and commendable to us has been your zeal in promoting the devotion to the most holy Rosary, especially in these recent years, under our authority. And it is not to be passed over in silence the piety (1) Matthew 7:7. (3) 1 Thessalonians 5:17. (2) Luke 18:1. (4) 1 Timothy 2:1.

[*Latin ed. p. 260*]

260 Letters addressed to the faithful, which seem to have been widely circulated in almost every place, must nevertheless be carefully considered so that they may more effectively ignite devotion and be retained with perseverance. And if we insist on urging this, as we have urged it not once but repeatedly, you will not be surprised, for you understand how important it is for the devotion to the Rosary of Mary to flourish among Christians, and you know very well that it is a part and a most beautiful form of that spirit of prayer of which we speak, and that it is suitable to the times, easily practiced, and of the greatest benefit. For since the primary and greatest fruit of a Jubilee, as we have indicated above, ought to be the amendment of life and the increase of virtue, we deem it necessary to

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specifically mention the avoidance of evil, which we did not fail to point out in our preceding Encyclical letters. — We understand and are deeply concerned by the internal dissensions that exist among some of our own, which, it can scarcely be said, loosen or certainly relax the bonds of charity, causing great harm to souls. Therefore, we have once again brought this to your attention here, Venerable Brothers, guardians of ecclesiastical discipline and mutual charity, because we desire that your vigilance and authority be constantly directed towards preventing this very serious harm. By warning, urging, and rebuking, strive that all may be concerned to preserve the unity of the spirit in the bond of peace, and that those who are the authors of dissensions may return to their duty, always remembering that the Only Begotten Son of God, in the very midst of His supreme sufferings, strove more vehemently with the Father than to have those who believed or would believe in Him love one another, that they may all be one, just as You, Father, are in Me, and I am in You, that they also may be one in Us (1).

1. Therefore, confident in the mercy of Almighty God, and by the authority of the blessed Apostles Peter and Paul, and by that power of binding and loosing which the Lord has granted to us, unworthy as we are, we grant to all the faithful of Christ, of both sexes, the fullest remission of all sins, according to the manner of a general Jubilee, but with this condition and law, that within the space of the coming year, 1836, they fulfill those things which are written below. Those who are citizens or guests in Rome, let them visit the Basilica of the Lateran, as well as the Vatican and the Liberian Basilica, twice; and there, let them pray for a time for the prosperity and exaltation of the Catholic Church and of this Apostolic See, for the eradication of all heresies and errors, for the concord of Christian princes, and for the entire faithful (1).

[*Latin ed. p. 261*]

LETTERS 264: May the people, with peace and unity, according to Our will, offer devout prayers to God. For these two days, they shall fast, using only food that is not considered a luxury, except for the days granted during Lent, or other similar fasts prescribed by the Church; furthermore, having duly confessed their sins, they shall receive the most holy Sacrament of the Eucharist, and each, according to his ability, shall contribute some alms, with the advice of a confessor, to some pious work that pertains to the propagation and increase of the Catholic faith. It is up to each individual to choose what is best, but we suggest two specific works in which beneficence will be excellently placed, both of which, in many places, are in need of assistance and protection, and both of which are beneficial to the state as well as to the Church: namely, private schools for children and seminaries for clerics. Furthermore, all others who reside outside the city, wherever they may be, shall, by you, Venerable Brothers, or by your vicars or offi-

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cials, or by those who exercise pastoral care, designate two, or if there are only two churches, three, or if there is only one, six times, at the specified interval, visit the churches; and they shall also perform all the other works mentioned above. We also intend that this indulgence may be applied to the souls who, united with God in charity, have departed from this life, as a form of suffrage. Furthermore, We grant you the power to reduce the number of visits to the aforementioned churches to a smaller number, according to your prudent judgment, for those chapters and congregations, both secular and regular, sodalities, confraternities, universities, and colleges that visit these churches in procession. We also grant that those who are traveling by sea or land, and who have arrived at their homes, or at some other designated location, may obtain the same indulgence after visiting the largest or parish church six times, and after duly performing the other works prescribed above. Furthermore, We grant to regular persons of both sexes, even those who perpetually reside in monasteries, as well as to all others, both lay and ecclesiastical, who are prevented by imprisonment, bodily infirmity, or any other just cause from performing the aforementioned works, or any of them, the permission to have a confessor substitute these works with other pious works, and We also grant the power to dispense with Communion for children who have not yet been admitted to their First Communion. Moreover, We grant to all and each of the faithful of Christ, both lay and ecclesiastical, secular and regular, of any Order and Institute, even those specifically named, the faculty to—

[*Latin ed. p. 262*]

262 We grant, through these letters, that you may choose any priest, whether secular or regular, who has been approved by you, to serve as Confessor; and that the nuns, novices, and other women living within the cloister may also make use of this faculty, provided that the Confessor is approved for the nuns. — To the Confessors, on this occasion and during the time of this Jubilee, we grant all those same faculties that we granted through Our Apostolic Letters, issued by the Most Holy Pontiff on the 15th day of February in the year 1879, with the exception of those that are excluded in those same letters. Furthermore, let all strive with the greatest care to honor the divine parent through special devotion and worship during this time; for we desire this Jubilee to be a sacred one under the patronage of the most holy Virgin of the Rosary; and we trust in her help, that not a few will be cleansed of the stain of sin, and that their faith, piety, and justice will be renewed, not only in the hope of eternal salvation, but also in the prospect of a more peaceful age. Of these heavenly blessings and of Our paternal benevolence, We give you witness, and We impart the Apostolic Blessing to you and to the entire clergy and people entrusted to your care, in the Lord. Given at Rome, near St. Peter's, on the 22nd day of December in the year 1885, in the eighth year of Our Pontificate.

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LEO XIII, POPE. *LETTERS OF THE MOST HOLY FATHER LEO XIII TO THE BISHOPS OF SWITZERLAND.* LEO XIII, POPE. Venerable Brothers, Greetings and Apostolic Blessing. We have received with great gratitude the letters sent to Us by you, as well as those which We received from the Bishop of Calaritan and the Bishop of Luxembourg, and from the beloved sons of the priesthood and the faithful, who held a solemn gathering in that city to promote the glory of the August Sacrament. In these, not only has a new testimony been offered to Us of the devotion of all of you towards Us and towards this Holy See of Peter, which We already knew and understood, but also of the eagerness of spirit and the excellent will with which you adhere to the documents of the Apostolic See, and also of the love of religion.

[*Latin ed. p. 263*]

Letters 263 reveal the most noble zeal with which you are inflamed concerning all the evils that oppress the Church and human society, so that you may devote your efforts to those areas which We have declared to be of the greatest importance at this time for Pastors and the Faithful. These, indeed, have contributed greatly to Our consolation; and We are likewise urged to, with the same sentiments of gratitude which you pour out to God, to reciprocate His benevolence, for the sake of the help which He grants us in Our ministry, so that, through His assistance, We may have zealous and devoted caretakers of His glory and valiant partners in the common struggle. Above all, We offer Our praise to you all for the outstanding piety with which you strive to defend and promote the honor and worship of the Holy Eucharist, at this time when contempt for religion and faith inflicts grievous injuries upon the love and benefits of Our Divine Savior among those who attack the Church and follow the paths of impiety. The more deplorable these things are, the more We desire that true children of the Church should protect the glory of the august Sacrament, and that they may draw from it, from which formerly the martyrs of Christ drew strength to overcome torments, vigorous forces for the good fight, and, joined in charity to Christ the Lord, may they foster among themselves that mutual charity which cannot be separated from the love of Christ. As for the requests which the letters addressed to Us contained, We wish to assure you all that they are very dear to Us, those which pertain to the honors and the increase of the divine glory of the Blessed Celestial Kingdom. Finally, testifying to you all with all Our heart Our benevolence, We implore the divine Reparator, Our Divine Savior, to fill you with the riches of heavenly graces, and We impart to you, to yourselves, to all, and to all your companions in piety, Our Apostolic Blessing, most cordially in the Lord.

Given at Rome, near Saint Peter, on the twenty-third day of November, in the year 1885, in the eighth year of Our Pontificate.

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LEO XIII.

[*Latin ed. p. 264*]

264 FROM THE HOLY CONGREGATION OF THE COUNCIL OF NICE, DECREE ON PAROCHIAL JURISDICTIONS, July 11, 1885, Session 24, Chapter 12 concerning Reforms. At the beginning of the preceding year, the Reverend Mari, a canon of the cathedral of Nice, passed away in the parish of Saint James, where he resided. The chapter of the cathedral not only administered the last sacraments, namely the Eucharist and Extreme Unction, to the ailing man, but also carried his body, and conducted the funeral procession through the streets of the parish of Saint James, all without the knowledge or consent of the pastor of Saint James. The chapter claimed to have acted in this manner both due to an unusual custom, as they stated, and due to the chapter's own statutes, Chapter XII. These statutes were issued on December 10, 1845, and approved on the last day of the same month and year by the Most Reverend Galvano, then the Bishop of Nice. However, the pastor of Saint James, believing his rights to be violated, and especially because the pastor of the cathedral refused to grant him the fourth honorarium at the canon's funeral, appealed to the Sacred Congregation. Upon being informed, the Bishop took steps to transmit the chapter's arguments, which were entirely contrary to the petitions, except for the funeral honorarium, which was willingly granted to the pastor of Saint James by the canon of the cathedral. The Bishop, however, stated that common law favored the pastor of Saint James, and that the statutes of the cathedral of Nice did not have the force to override this, because the most extensive faculties granted to the Bishops by Cardinal Caprara only applied to the first future Bishops, and that the Most Reverend Galvano, who approved the statutes, was not the first future Bishop, but rather the successor to Bishop Colonna; furthermore, the custom was neither peaceful nor continuous. SUMMARY OF THE FACTS.

[*Latin ed. p. 265*]

NICE. 265. A Synopsis of Disputations. By JAMES. And it truly appears that the Chapter of the Cathedral of Nice cannot, in any way, claim the right to administer the Sacraments to the dying within a foreign parish, nor to remove and transport their bodies to the cathedral, because the parish priests, in the exercise of their parochial rights within the limits of their own parish, possess a founded intention and legal assistance, exclusively concerning others; see Text. in cap. 1, Be, and in Clement. Antepr. §. Verum. Also, Barbosa, *De Officiis Parochi*, part 3, chapter 26, no. 66. It is certain that among these parochial rights, those which are subject to dispute are enumerated; indeed, first, the right to administer the Sacraments seems to suffice, not only from the aforementioned Clementine Antepr. §. Verum,

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but also from the Council of Trent, Session 24, chapter 13, *De Re f or.*, and, in particular, concerning Extreme Unction, from the Roman Catechism, part 2, *De Sacr. exlr. unct.*, where it is stated that it is not permitted to anoint the sick, except for a reason of necessity, without the permission of the parish priest. Therefore, the Doctors unanimously teach that the Sacrament of the Eucharist, for the viaticum, and the other, Extreme Unction, belong by right to the parish, and that their administration pertains exclusively to the parish priests, as they teach among others, Monacell. in *Formulis Legalibus*, part 1, title 10, no. 4; De Luca, *De Regul. disc.* 1, no. 60. This right of the parish priests is not diminished, even when it concerns the canons of the cathedral church; indeed, it has been repeatedly decided by the Sacred Congregation that the right to administer the Sacraments to the canons and beneficed clergy of the cathedral church who are sick and residing in foreign parishes belongs to the parish priest of their domicile or residence, and not to the parish priest of the cathedral, especially in Mantuana, March 15, 1680, no. 4. The second right, of which we are speaking in the second doubt, pertains to the parish priests, and among their rights, it is strictly and exclusively a PAROCHIAL RIGHT.

[*Latin ed. p. 266*]

266 NICEA. It appears to be placed beyond any doubt that the matter must be considered. Indeed, the right of burial is commonly called the parochial right, according to what is handed down by Barbosa in *De Officiis et Potestatibus Parochialibus*, part 3, chapter 26, number 20; and in general, such funeral functions are properly those of the parish priests, as Ciernen, cited above, teaches. Recently, Benedict XIV in *Institutiones Ecclesiasticae*, 105, number 124, and the Roman Congregations have consistently taught this. And it is clearly derived from the Roman Ritual, title *De Exequiis*, that it is the right of those who care for souls to wear the stole at funerals, to sprinkle the body with holy water before it is carried out of the house, and to say the antiphon "Si iniquitates," and the office over the body in the church. Indeed, the Sacred Congregation of Rites, writing from Aversa on September 15, 1640, stated: "It pertains solely to the parish priest to sprinkle the body with holy water before it is lifted from the house, and it pertains to him to chant 'Si iniquitates,' and to perform the office over the body in his church." Moreover, the Sacred Congregation of Rites decreed on September 21, 1631, and it was confirmed in Monopoli on March 21, 1671, and by the Sacred Congregation of the Holy See in Faventia, *Praelectiones*, on June 7, 1760; in *Nullius Sublacensis* concerning parochial rights, on January 29, 1825; and especially in *Callienensis* concerning parochial rights, on December 20, 1828, that this right pertains solely to the parish priests, even if a canon of the cathedral chapter participates in the funeral and the deceased is a member of the chapter. Therefore, since the right to administer the sacraments of the dying

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and the right of burial are among those rights that strictly and exclusively belong to the parish priests, it follows that no right pertains to canons who die within the limits of the parish of Saint James. For in the law, funerals are considered as a single thing, and the right of the funeral office cannot be separated from and divided from the right of burying the body, as stated in the Sacred Congregation in Veglen, July 15, 1882, §. Indeed, and as is stated there in Text, in chapter 6, in chapter "Si nostra De Sepulturis"; also, the association is inseparable from the first and last acts that complete the funeral, as taught by Pignatelli.

[*Latin ed. p. 267*]

NICEA. Council of Nicaea, Canon 267, section 47, number 1, volume 7; De Luca, *De Regni*, discourse 3, number 53. However, in every case, it has repeatedly decreed that the fourth part [of the ecclesiastical revenue] is always due to the parish priest, especially in the administration of justice and the performance of funeral rites in the diocese of Tiburtina, on May 12, 1685. Moreover, the chapter may acquire, with regard to the aforementioned rights, a position for itself from the chapter statutes, or from established custom. For since the disputed rights, according to the disposition of the sacred canons, pertain to the office of the parish priest, statutes, even if approved by the Ordinary, are to be considered of no weight, insofar as they are contrary to common law, according to the text in chapter [referring to a specific text on superiors and obedience]; Benedict XIV, *De Synod. Dioec.*, book 12, chapters 1 and 5; Sacred Congregation, in the matter of the administration of justice and funeral rites in Ariminen, December 18, 1824, §. It should be noted that it cannot be said that the Bishop of Galvano approved statutes in 1845, even with the authority granted to him by the decree of Cardinal Caprara, the Apostolic legate representing the Holy See in the government of France; indeed, this seems to be very easily admitted. For at that time, the provinces of Savoy and Nice were not yet under French rule; and only in the year 1860, Pius IX, heeding the wishes of the Emperor of France, Napoleon III, took steps to extend the convention of Pius VII with the French government, which had been initiated on July 5, 1801, to these provinces as well. Therefore, in 1845, the Bishop of Galvano could not exercise that authority, which Cardinal Caprara granted only to the Bishops of properly called France. Given this, it seems that the Bishop of Galvano exceeded his powers, and his statutes are of no value with regard to those things that are contrary to the law; and in the case of the right granted to the canons to administer the sacraments of the sick and to perform funeral rites for their brethren, they cannot be considered. However, it does not seem that such statutes could have begun to have force when Pius IX extended the convention of Pius VII to the province of Nice; for it is well known that what is defective from the beginning cannot be healed by the passage of

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time.

[*Latin ed. p. 268*]

268 NICE. It is known from Book 3, Title 39 of the Corpus Juris Civilis that things that are uncertain, and those that are done and are invalid, are considered the same; also, in the title "De die," Section 1 and following. This is sufficient for the argument. However, even if it were conceded that the decree of Cardinal Caprara could have referred to the diocese of Nice, nevertheless, the most extensive powers that Cardinal Caprara, as legate of the Holy See, delegated to archbishops and bishops of France for the founding of churches, as well as for the canonically erecting of chapters in metropolitan and cathedral churches, apply only to future bishops; but with the bishops themselves, these same powers cease, as canonists commonly interpret. Furthermore, Dominic Galvano, the author and approver of the statutes of 1845, was the successor of the Most Reverend Bapt. Colonna de Istria, the future bishop, and not himself the future bishop (1). Regarding the asserted custom, it can be observed from the outset that, since it concerns strictly parochial rights, it cannot have any effect; for the rights of the parish priests are not only not extinguished by contrary custom, but not even if there is a contrary observance of a hundred years, as the Holy Congregation of the Council has repeatedly declared, especially in the "Buren" on Parochial Rights, August 28, 1786. Moreover, the parish priest of Saint James contended that such a custom never existed. And indeed, that this custom did not exist before the year 1845, is, above all, evident from a certain memorandum inserted in the parochial books by the priest Cassini, parish priest of Saint James, on the occasion of the funeral of the canon of the cathedral, Olivaris, who had died (1). Cardinal Caprara ordered that chapter statutes be drawn up according to the common law for the proper and flourishing establishment of chapters, saying: "By virtue of the apostolic authority, we grant and concede to the archbishops and bishops of France, and to their successors, the power to amend the statutes of their respective chapters, so that, after they have been canonically established, they may, if circumstances permit, erect a chapter in their churches in such a form as the most holy canons and the circumstances themselves deem suitable. Or, in establishing or amending them, they shall observe the most holy canons with religious observance, and care shall be taken that due regard be given to the laudable practices previously in force."

[*Latin ed. p. 269*]

NICEA. In the year 1814. And this having taken place there is testified by the same parish priest, Cassini, who states that he learned of this custom from ancient documents, and that the Bishop Colonna in the year 1824 decreed that it should be observed, even after the erection of cemeteries, as the same parish priest further noted. He asserts that the alleged custom

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could not have taken place after the year 1845. For the sake of brevity, let us hear the words of the parish priest himself: "After the aforementioned decree given by the Most Reverend Bishop Galvano in the year 1845, the alleged custom could in no way have existed. For whenever canons residing in the parish of St. James have died, such actions have been taken that they do not merely fail to introduce a custom, but openly contradict it. He cited several instances of this kind, which, he stated, are well-known to those concerned, and which have been confirmed by the testimonies of men who, according to the Bishop, deserve complete credence. Therefore, since the alleged custom of the canons has neither been continuous nor peaceful, it will be easy to conclude that it has no value, as stated in Chapter 1 on Prescriptions, paragraph 6, by Barbosa in that chapter, and regarding the duties of the parish priest; and therefore, it should be terminated according to common law, as decreed by the Sacred Congregation of Councils in Eugubina on July 4, 1614. JURACAPITULI. The advocate of this cause, after making certain preliminary remarks, divided his argument into two parts, and in the first, he sought to demonstrate his claims based on the statutes, and in the second, based on the ancient custom of the chapter. Therefore, addressing the first point, he said that, while the dignity of the episcopal senate is considered in the statutes, no financial detriment is caused to the parish priest; for he maintained that the same statutes could only be disapproved for two reasons: either because a flaw in the law was present in them, or because the Bishop who enacted the statutes lacked apostolic authority. However, he declared that the first hypothesis should be completely rejected, since a special provision, which transfers the exercise of certain parochial rights to the chapter, is in no way contrary to divine law; nor does it contradict positive law, as the acts...

[*Latin ed. p. 270*]

270. NICENE: The care of souls in the parish should be divided between the parish priest and the chapter, especially if, as in the case here, the exercise of such rights is limited to designated individuals and does not extend to the rest of the clergy. Indeed, without any exception, nothing is lost to the jurisdiction of the parish priest if the Bishop exempts his own senate from the jurisdiction of the parish priests in the making of statutes; but he exercises his own right, because, as Pignatelli observes in *Consultations*, volume 3, number 48, paragraph 60: "Since parochial law was originally with the Bishop and his cathedral church before the division of parishes, both in its nature and in its exercise, it can be said that either the Bishop, in the distribution of parishes, has reserved this right, namely, the administration of funerals and the Viaticum, for the cathedral and its chapter, or that he has granted this right to them, which he can do, because, as the rights of parishes are concerned, the Bishop can do anything in his diocese that the Pope can do in the entire world." Furthermore, if such a provision

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could generally benefit the cathedral church, it should be admitted for the sake of the canons who are dying and deceased, who are members of that very church. The right to administer funerals and the last sacraments is given to the parish priest because the faithful residing in the same parish are subject to him, and receive the sacraments from him. But the canons are perpetually parishioners of the cathedral church, because, by reason of their benefice, they must always be found in that church, or because they are obliged to receive the sacraments and hear divine services there, as Frances de Ecclesia Cathedrali, chapter 17, paragraph 60; Amostaz, *De Causis Piis*, book 6, and therefore, they should be buried there, as Anael teaches in *Decretum*, book 3, title 28, section 1; and the Rota in Barcelona, *De Iuriis Parochialium*, October 2, 1735, before Rezzonico. But it is better to hear Cardinal Lercaro, *Practicae*, conclusion 99, number 5, who explains the matter as follows: "A canon or other cleric of the cathedral church residing in another parish, namely, the parish of his domicile, does not become a parishioner of the particular church, but of the cathedral church, because wherever one remains, he is obligated to his own parish, and one who resides in another parish is not..."

[*Latin ed. p. 271*]

NICENE. 271, it is asserted that a parish priest is subject to a foreign bishop, because the cathedral is not merely a general, but an immediate parish. This is consistent with Reiffenstuel in *Jus Canon.*, book 3, title 28, paragraph 75, and Panimolle, Decree 5, paragraph 10. The second objection, namely that the Bishop was not legitimately authorized to enact statutes, because Cardinal Caprara granted this right to Bishops in the future, rests on a shaky foundation. For, it is said, among future Bishops, the Bishop Galvano, who succeeded Bishop Colonna, could be considered the first, since, according to the Gallican custom, and with only a few canons, a chapter was established by him. Furthermore, even if the decree of delegation is strictly interpreted, the authority of Bishop Galvano is evident from the following words of the decree: "However, it is left to their successors to change those statutes, as they deem fitting, after consulting the Chapters, if, considering the circumstances, they judge it useful and opportune." But the Bishop reformed the Gallican statutes with the advice of the chapter. Therefore, when he stated the authority he used in enacting them, he said that when his predecessor was granted "the right to canonically erect a chapter, and also... to establish statutes according to the law, the successors were left, considering the circumstances, the power to change them..." Therefore, the patron maintained that, since the statutes were validly and lawfully enacted according to the instructions of the pontifical legate, they must be observed, even if they contain something beyond the law. This conclusion derives from the most common principle that special statutes prevail over general law, as taught by Cardinal De Luca in *De Iudiciis*, discourse 35,

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paragraph 49: "First, the more particular law is considered, which consists of the laws or statutes of a chapter, or of another university, in matters concerning itself and its members; then, the canon law or pontifical law is observed in all controversies." Turning to another point in his argument, the patron asserted that the aforementioned rights of the chapter were fully confirmed by custom. To prove this, he cites Cardinal Caprara, according to...

[*Latin ed. p. 272*]

272 NICE. The Council of [the Church] has commanded Bishops to govern the ecclesiastical administration "so that, in establishing or amending regulations, the observance of religious and sacred canons be maintained, and that consideration be given to the use and customs previously in force, adapted to the present circumstances." It is observed that the chapter in Gallus and neighboring regions generally enjoys the right to administer the sacraments to the canonically ill, and to perform their funerals, wherever they may reside within the parish, as stated in Laqueux, Manual, canon law, no. 396, and Bouvier, Moral Theology. Furthermore, the Bishop in the case of Divionen, on July 8, 1865, (1) reported to the Sacred Congregation that the dispute regarding the administration of sacraments and the performance of funerals was resolved in favor of the chapter, because "1. The chapter was found to be established in possession of this right; 2. At that time, I knew that the chapters of all the cathedral churches in Gallus acted with equal authority, and no one contested this." Therefore, it is not surprising that the church of Nice, belonging alternately to the Kingdom of France and the subalpine kingdom, has maintained an ancient custom, which is in no way dependent on changes in territory. Witnesses, who are either born in Nice, or belong to the cathedral church, and to the parish of St. James, confirm that this custom has been observed with secular approval and has always been confirmed by the patience of the parish priests; and all exceptions are greater in number. From the concordant testimonies, the advocate stated, it can also be sufficiently demonstrated that the observance extends to a prescriptive period, which, considering the longevity of some of the witnesses, covers more than fifty years; and this prescription, even if it were contrary to common law, would be valid to prescribe certain acts of jurisdiction; a fortiori, since it pertains to something beyond established law, as in this case. Indeed, according to Engel on Customs, no. 14, ten years are required to establish a custom beyond the law, while forty years are required against the law; and Genuensis, in "Praxi Cur. Neap.", chapter 51, no. 2, states: "The care of souls and the power to administer the sacraments..." (1) You have this question in Volume III, page 127; which was again raised and resolved on May 29, 1869, and reported in

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Volume IV, 577.

[*Latin ed. p. 273*]

NICENE. 273 is prescribed and established by custom. However, a period of forty years is required to establish this prescription. "This is also taught by Gratian, chapter 492, paragraph 1, as well as by the common opinion of canonists and by the Holy Rota, decree 455, paragraph 4, page 1, revision. However, it is stated that a prescription does not require a long period of time if a centennial custom exists; and to fully re-establish such a custom, according to Cardinal De Luca in *De Iudiciis*, discourse 22, paragraph 59, three principal qualities are required: 1. that more witnesses should testify to the custom existing for forty years prior to the dispute, and therefore the custom is considered centennial if the ages of the witnesses are more than fifty-four years; 2. that the witnesses should declare that they received this custom in the same way from their ancestors; 3. that peaceful observance of the custom is demonstrated. Indeed, it is stated that there are thirteen witnesses, distinguished by public offices, almost all of whom are over fifty-four years of age, and some even over seventy years of age, who testify to this ancient custom. On the other hand, an interruption of the custom has been shown in only three or four cases, and even those cases are disputed. Therefore, a certain centennial custom arises; the force of which no one is ignorant. With such a custom established, the privilege, regarding which there is discussion, is maintained, and the author of this is the Sacred Congregation of the Council, for several reasons, but especially in the Administration of the sacraments and funerals in Auxitana, on July 9, 1881 (1). Considering these points on both sides, the following is to be noted (1). The question remains: Volume XIV, regarding the administration of the sacraments, page 447. Remember everything we have noted regarding the canonical rights of cathedrals; the parochial rights are opposed by custom, contrary to the Council of Trent, and regarding a custom contrary to the rights, it is considered to be legitimately introduced if it is generally observed, as can also be seen from the resolutions of the Sacred Congregation of the Council, as can be gathered from various resolutions reported in the *Acta*, Volume XVIII, page 18.

[*Latin ed. p. 274*]

274. NICEA. Doubts. I. Does the chapter of the cathedral church have the right to administer the sacraments of extreme unction to its canons residing in the parish of Saint [lac^i] in such a case? II. Does the same chapter have the right to remove the bodies of canons residing in said parish, and to transport them to the cathedral church, and from there to the burial of the canons in the public cemetery, in such a case?

RESOLUTION. The Sacred Congregation of the Council, having considered the matter under date of July 11, 1885, decided to respond: Affirmative,

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and moreover, to both.

FROM WHICH WE GATHER: I. That pastors have a well-founded intention and legal assistance over others within the limits of their own parish, regarding the exercise of parochial rights, among which is most prominently included the right to administer the sacraments of extreme unction to the dying, to remove their bodies, and to bring them to burial. II. That these rights, however, are subject to modification by contrary and legitimately established prescription and custom, so that the common law loses its power to bind, whenever custom, with the necessary prerequisites, can be opposed. III. That in almost all of Gallia, a custom has been established whereby the canons enjoy the right to administer the sacraments to sick canons and to perform their funerals in any parish in which they reside. IV. That a canon of the cathedral church, residing in another parish, is not considered a member of the particular church of that parish, but of the cathedral church; because wherever someone resides, he remains obligated to his own parish; and because the cathedral church is the general and immediate parish of the canons of the chapter.

[*Latin ed. p. 275*]

278. TARRAGONA. QUERY REGARDING PENALTIES FOR ABSENT CANONIC REGULARS. August 22, 1885. Session 24, chapter 12, concerning Reforms. SUMMARY OF THE MATTER. The Archbishop of Tarragona presented the following to the Apostolic See: "By the decree of the Council of Trent, Session 24, chapter 12, canon regulars and others attached to the choir are deprived of half of the fruits for the first year, and thereafter of all the fruits, if they are absent from their churches for more than three months in any given year; hence, a doubt arises as to whether the penalty of deprivation should be imposed only after the entire year of absence has elapsed, or also proportionally, even during the first year of absence. Fagnanus argues in favor of proportional deprivation according to the time of absence, and cites declarations of the Sacred Congregation of the Council in this sense. More recent canonists of the Fagnanian school, whom I have consulted, are silent. Furthermore, I have seen a recent judgment of the Spanish Rota that is contrary to Fagnanus, and which has been applied in practice. Therefore, I am in doubt as to what is definitively established in this matter, and what should be done in this case. Wherefore, I humbly request that the Most Eminent Fathers will, with their exceptional wisdom, resolve this difficulty."

SYNOPTIC DISCUSSION. Furthermore, the difficulty presented by the Archbishop of Tarragona lies primarily and especially in the following: "It is not permissible to be absent for more than three months in any given year... otherwise, each person shall be deprived of half of the fruits, which they have earned through their benefice and residence; subsequently, and by connection of the matter, another point is raised, concerning the penalty

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to be imposed on those who are absent in the second year. And in this place, where the matter clearly concerns the quantity of the penalty to be imposed on canon regulars who are culpably absent, there is a twofold opinion among the Doctors. Some, following the Council of Trent,..."

[*Latin ed. p. 276*]

276 TARRACONEN. Some interpret the words strictly and literally; others, more broadly, and according to equity. The stricter interpretation holds that those who are absent for more than three months, having been permitted to be in Trent, whether for the entire year or for only a few months beyond that period, should always, and in both cases without distinction, be penalized by forfeiting half of the fruits of the entire benefice, and they are obligated to do so. The other interpretation, understanding "Trent" more leniently, affirms that he who has been absent for the entire year should indeed forfeit half of the fruits of his benefice; but he who has been absent for only a few months should be penalized in proportion to the number of months he was absent, forfeiting half of the fruits accordingly. In favor of the more lenient interpretation, Fagnanus states in L. 3 Decret., cap. *Ex tuae*, De cleric. non resid. n. 14 and 15: "Furthermore, the Congregation has decreed that a period of three years should be awaited before proceeding to total deprivation, and that in the first year, the one who is absent beyond the permitted time should be deprived of half of the fruits, and indeed in proportion to the months of absence, unless the absence is for a full year. In the second year, all the fruits. In the third year, the deprivation of the title; and that such deprivation cannot proceed except with the observance of this form, as I have also said in c. Licet n. 26 below." And Ferraris, adhering primarily to the authority of Fagnanus, states something very similar in his *Bibliotheca canonica*, v. *Canonicus* art. 5 n. 16. Indeed, it seems harsh that someone, even if excusably, absent for only a few days or weeks beyond the permitted time, should be deprived of the entire semester. Moreover, if the penalty of deprivation were to proceed in proportion to the time of absence, this penalty would urge the cleric to return each day and each month, because each day and each month of further absence would impose a greater penalty; thus, in this hypothesis, the cleric would be constantly urged to correct himself, or to return. Whereas, in the other hypothesis, the opportunity for disobedience in absence might perhaps be offered; since...

[*Latin ed. p. 277*]

TARRACONEN. 277: He who knows that he is already, through his own fault, subject to a six-month suspension, or at least could be suspended, and that, even if he delays his return, he may incur a greater penalty, will not be deterred by the prospect of a longer absence, and may even postpone his return for a longer time. On the other hand, the letter from the head

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of Trent seems to suggest a contrary opinion. For when the Council states: "otherwise, in the first year, each one shall be deprived of half of the fruits which he has obtained through his office and residence," these words do not appear to indicate a fixed period of time; indeed, they may even exclude it. For if the half of the fruits obtained through the office is to be lost due to the negligence of the one absent, even if obtained through residence, it would seem that we are speaking of someone who has been absent for more than half the year, and yet (if he has not observed the time prescribed by the Council) he is to be penalized by the loss of half of the fruits, and thus he would actually lose the fruits obtained even through residence. And this meaning is perhaps confirmed by the subsequent passage: "if the same negligence has been used," he shall be deprived of all the fruits which he has obtained in the same year," which, as it is not unreasonable to suppose, he has obtained through his presence and diligence. Furthermore, when Trent states: "it is not permitted to be absent for more than three months; otherwise, etc.," from the context, the word "otherwise" seems to mean and is equivalent to the proposition: "if, however, he has been absent for more than three months, etc."; in which case, a fixed period of time would seem to be excluded, since it would in no way be indicated. Finally, if a penalty is admitted for the proportional time of absence, the matter would seem to be both more complicated and entirely indefinite. For suppose that someone has been absent for three months, beyond the permitted time; and then the question would arise, whether such a person should be punished only for the three months of absence, or rather for six months: and it would certainly seem, according to this theory of a proportional time, that such a person should be punished only for the three months, and not for six; because for the three preceding months he was legitimately absent: for he had the canonical right to do so. But with this...

[*Latin ed. p. 278*]

278 TARRACONEN, initially, held that three months of conciliar attendance should not be counted towards the penalty; however, if someone were absent, for example, for eight or nine months beyond the permitted three, it would be necessary to say that such a person should be deprived of four months' or four *J* [presumably a unit of income] of their income, and so on. Thus, either it would be admitted that someone absent for the entire year would not be penalized with half of the income of their benefice, contrary to the prescriptions of Trent; or it would be said that someone absent for more than three months immediately loses the benefice according to the law, and should also be punished for those three prior months in which they were legitimately absent, which would seem unjust. On the other hand, in the contrary opinion, this inconsistency would not arise. For, if it were always considered as a fault, deserving of the most severe punishment, any absence beyond three months, then that person who is

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absent would always be deserving of being punished with a six-month deprivation. However, the rigor of this discipline, which perhaps found its reason in the wickedness of those times, and in the desire of the Fathers of Trent to prevent easy abuses in this matter, will be mitigated in the future, if it is true, as some doctors note, that it is left to the judgment of the Bishops to impose said penalty either in full, or even to diminish it, considering the circumstances. Nevertheless, even after considering these arguments, it is necessary to recall what is written in Garcia, *De benef. part.* 3, *de resid.*, chapter 2, paragraph 423; in that place, a declaration of the Sacred Congregation is written: "If the same treasurer is absent from the service of the Church for more than one year, he must be deprived of half of the fruits of his canonry for that year." And it is added: "For the second year, if he has used the same negligence, he must be deprived of all the fruits." Where, especially those words, "if he has used the same negligence," that is, according to the preceding context, "if he is absent for more than three months in one year," seem to clearly reveal the intention of the Sacred Congregation and to determine it firmly. Furthermore, it is certain that not a few Doctors openly subscribe to this.

[*Latin ed. p. 279*]

TARRACONEN. 279, either explicitly or implicitly, favors the stricter interpretation regarding the matter under discussion. Thus, besides Garcia, loc. cit., nos. 141, 423, there is Barbosa, who in *Summa Apostolica*, decisions, collection 101, states as follows: "If a canon is absent from the service of the Church for more than three months, but less than one year, he shall be deprived of half of the fruits of his canonry for that year; for the second year, if he has used the same negligence, he shall be deprived of all the fruits, and so on, with increasing contumacy." These words are identical to those found in Albulena, cited, and appear to have a precise meaning. Reiffenstuel also holds this view in *Liber III, title 4, de clericis non residentibus*, § 4, no. 123, 399. However, Pignatellius should not be overlooked, who in *Consultationes Canonicae*, volume II, Consultation 4, nos. 2 and 3, states: "... The decree of the Council of Trent does not say that one should be deprived who is absent for the entire year, but it says that it is not permitted to be absent for more than three months in any year, and therefore, to incur the penalty, it is sufficient that one be absent for more than three months in any year." Navarrus, *Consilia 3 de clericis non residentibus*, and Garcia, *de beneficiis particularibus*, 3, chapter 2, no. 144, agree with this. It is clear from the text that the Council's intention is German, as it states: "Let him be deprived in the first year of half, and in the second year of all the fruits, even those which he acquired that year by reason of residence, if he was absent for more than three months." This is a clear indication that even if he resides for some time during that year, if he is absent for more than three months, he is to be deprived. The same is

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observed by P. Thesaurus, *De poenis ecclesiasticis*, part 2, version *Residentia*, chapter 3, no. 4; Ugolinus, *de officio Episcopi*, part 1, chapter 19, no. 3; and Antonellus, *De regimine ecclesiastic*, book 3, chapter 12, no. 1. And the Holy Congregation declared as follows: "If a canon is absent from the service of the Church for more than three months in any year, he shall be deprived of half of the fruits for that year." This is so true that to avoid this penalty, it is necessary to reside for nine months each year, as declared by the same Holy Congregation in *ad d. c. 12, sess. 24*, and as stated by Squillan, *de obligationibus clericorum*, part I, no. 120." (1)

(1) It should be noted that these words were spoken by a distinguished author.

[*Latin ed. p. 280*]

280 TARRAGONA. With Pignatelli and others, Castropalaus, *De virtutibus*, tractate 7, disputation 3, point 7, states as follows: "Besides the aforementioned deprivation of distributions, if those who are benefited have been absent for a time exceeding that permitted by the Council of Trent, they are, for the first year and for the first offense, to be deprived of half of the fruits which they have earned through residence and service in the divine offices." Furthermore, Leurenius, *Formularium beneficiorum*, part 1, section 3, chapter 1, paragraph 424, number 3, cites Garciam; Giraldi, *De poenis ecclesiasticis*, part 2, chapter 3, page 365, also mentions Garciam; and, as it seems to me, Schmalzgrueber, in the title *De clericis non residentibus*, section 2, number 40 (1). Therefore, it appears that the opinion that is stricter in its judgment has the support of a greater number of doctors, that it is more in accordance with the letter of the Council, and that it has been confirmed at least once by the Sacred Congregation of the Council. However, the harshness that this strict discipline entails is lessened if one considers what Garcia states in *De beneficiorum*, chapter 2, number 50, part 3, and others observe regarding this matter: namely, that the Bishop, according to the strictness of the law, can indeed impose the penalty that the Council has predetermined for the absent party; nevertheless, it is left to the discretion of the Bishop to lessen the amount of the penalty – there – "It is, however, permissible for the Bishop to lessen or increase this penalty before judgment, but not to entirely abolish it." If the Bishop of Tarragona does not only consider the amount of the penalty to be imposed on those canonically absent due to negligence, but also refers to the time during which the penalty was not imposed in order to provide evidence of something, the words that the author has inserted are, but only among the arguments presented by the adversaries; they are not without their own strength. While the author rejects the deductions of his opponents, he retains the aforementioned words, which, in that consultation, seem to indicate that the Bishop could, in his own authority, impose a penalty on a single canon who was absent, and they reveal the

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author's mind on the subject matter. This was the case for almost three years, namely, the deprivation of half of the fruits of the first year, the entire fruits of the second year, and the canonry of the third year. To this doubt, the response is given in Tomus IX, consultation 114, 15. (1) Many other authors, such as Pirhing, Gonzales, Cardinal De Luca, Maschat, and Pitonius, Benedict XIV, state negatively. Then, presenting the objection raised by the adversaries, he relates that they do not consider the matter to be relevant.

[*Latin ed. p. 281*]

TARRAGON. 281: Regarding those who are absent, it must be determined whether a full year of absence has elapsed; or, rather, whether that full year has not yet elapsed; there is no disagreement among the Doctors on this matter. And it suffices to recall what Benedict XIV states in *Inst. Ecclesiast.* 107, § 6, n. 37, in its entirety: "Since the Council proceeds in this manner: otherwise, let each one be deprived... etc., therefore, we believe that nothing else should be understood than what the Holy Congregation decreed in the year 1573: - It is asked concerning the procedure to be followed against canons who are absent from the church for more than three months, according to chapter 12 of Session 24 of the Council; namely, whether such contumacious and absent canons should first be warned to remain before being punished, as the same Council commands all non-resident vicars to be warned. - The Holy Congregation judged that they should not be summoned or warned to remain; but if they have been absent for more than three months, then they should be summoned to state why they should not be deprived, according to the decree of Session 24, chapter 12. From this, it is sufficiently clear that the Bishop can proceed according to the decision of the Council, before a full year has elapsed. The same is stated by Garcia, who refers to the same decree, in *De benef. part.* 3, chapter 2, on residence, n. 145; Barbosa, *Summ. Apóstol, decis. Collect.* 101; Giraldi, *De poenis Eccles.*, part 2, chapter 3. However, it must be diligently noted that the penalty of deprivation can be imposed on a canon for absence, even if he is now residing there. This is found in a decree of the Sacred Congregation on February 17, 1663, which Pignatelli I, in the aforementioned work, discusses extensively in disputation 5. Since the question was posed: "Can the Bishop impose a fine on a canon who is now residing?" The Holy Congregation judged "that the Bishop can." With these things noted, the doubts to be clarified are presented. I. Whether the half of the fruits, by which a canon, illegally absent, is to be punished, according to chapter 12 of Session 24 of the Council of Trent, is to be understood as referring to the fruits of the entire year, or to the proportion of time.

[*Latin ed. p. 282*]

282 TARRACONEN. And while affirming with respect to the first part, [he] denies with respect to the second. II. Whether such a penalty ought to

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be imposed equally and always, and whether it is immediately and canonically absent, is the question. RESOLUTION. The Sacred Congregation, having considered the matter, on August 22, 1885, decided to respond: - To I, affirmative with respect to the first part, negative with respect to the second; To II, negative, but its application depends on the Bishop. From which, the following may be gathered: 1. To incur the penalty established by Trent, it is sufficient for a cleric to be absent from the choir for more than three months; in which case, in the first year, he will lose half of the fruits [of his benefice], and in the second year, the entire fruits, which he also holds by reason of residence, with the stipulated time deducted. II. Whatever time is stipulated in assessing the penalty to be imposed on a cleric who is negligent, is excluded from the mind of Trent, from which it is stated absolutely: it is not permitted to be absent for more than three months... otherwise... he shall be deprived of half of the fruits which he holds by reason of the prebend and residence. III. Therefore, to avoid this penalty, it is necessary to reside for nine months of any year. IV. The matter is made more complex if it is admitted that the penalty is to be paid in proportion to the time: because, according to the sanction of Trent, a cleric who is absent for an entire year cannot be penalized with half of the income of his benefice, unless he loses the benefice, according to the law which allows for three months of absence. V. The application of the penalty for clerics who are absent for more than three months depends on the Bishops. SAVONEN. AND NAULEN. REGARDING THE SOLUTION OF THE PENSION. August 22, 1885. Session 24, chapter 13, and session 23, chapter 16, Concerning Reforms. SUMMARY OF THE CASE. Anthony, a priest, having held a parish for seven years, in the year 1855...

[*Latin ed. p. 283*]

SAVONEN and NAULEN. 283. Because of the hatred of the people, he relinquished the parish, reserving for himself an annual pension of fifty livres. The Bishop maintained the pension; and furthermore, he assigned to the resigning pastor an additional annual allowance of one hundred and thirty livres, to be taken from the revenues intended for priests established in old age. After these events, having obtained, through apostolic letters, a remission of the pension concerning the relinquished parish, and having appointed someone to manage his affairs within his paternal home, the priest Anthony requested permission from the Bishop to go to America, where he resided for approximately twenty-eight years. However, during this time, until the first half of the year 1869, both the pension and the subsidy of 130 livres were paid; but from that time onward, upon the transfer of the Bishop Riccardi to the metropolitan see of Torino, his immediate successor informed the priest Anthony that he would no longer receive either the pension or the subsidy, unless, changing his plans, he abandoned America and returned to his own diocese. However, still being far from

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the diocese, nothing further was paid to him, and thus matters proceeded, first under the immediate successor of Bishop Riccardi, and then under the current prelate. Under these circumstances, the resigning pastor returned to Italy in the year 1884; and immediately, through himself, he petitioned the episcopal curia, in order to receive not only the pension for the years to come, but also for the preceding years. The prelate, however, responded to his request, saying: that nothing was due to him for the time of his absence. For the future, as long as he remains in the diocese, he is entitled only to the pension, and certainly not to the annual allowance to be drawn from the fund of the old priests. A Synopsis of the Dispute. The patron, favoring his client, first observed that the pension should be considered as an allowance for sustenance for the priest Anthony, whether one considers the nature of this kind of pension, or the manner in which the BISHOP GRANTS PAROCHIAL RIGHTS TO A RESIGNING PRIEST.

[*Latin ed. p. 284*]

284 SAVONEN. AND NATJLEN. Riccardi was assigned. And indeed, Garcia De Beneficio, page 1, chapter 5, number 9-10, writes: "The pension, which is in use today, namely that which is assigned in place of a benefice, so that someone may more easily be able to subsist, or for the reason of resignation, is said to be substituted in place of sustenance." And it is also clear from these words of the instrument that the pension was granted in the place of sustenance: "and for this purpose, so that Reverend Anthony may have from whence to live decently... (the Bishop) promises, by himself and his successors in the episcopate, to pay annually to the aforementioned Reverend Anthony one hundred and thirty annual sums." With these premises, it is argued that the pension of 130 sums was assigned as sustenance by natural law; and that it is moreover a matter not only of piety and favor in law, according to I. Mela, ff. De Aliment, and ciò.; and I. 1 Sancimus Cod. De Sacros. Eccles. §. Aliud, in Auth.; but absolutely obligatory, as the Rota Decis. 650, number 3, volume 3, page 1, before Motines; Sperelli Decis. 156, number 36, state. Furthermore, it is also possible by law to demand the payment of such a pension even for the past, when the said pension has been established by a certain contract between the priest Anthony and the Bishop, in the act of resignation; Sperelli Decis. 138, number 40 - where "Sustenance for past times may be claimed, when it is provided by right of action, as if by contract, or by last will." To this, the advocate adds that, in this case, the pension is also in place of a benefice, and ought to be considered "in the manner of a benefice," as Garcia expressly states in the aforementioned citation; therefore, it must also follow the nature of the benefice itself. Since a benefice is a perpetual right to receive the fruits from ecclesiastical goods, it follows that the pension must also be considered a perpetual right, and therefore always due. Therefore, the advocate concludes, this portion of the pension, from the day on which it was not paid,

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is due, either from the rector of the church of Cento, or from his heirs. As for the other, 130 sums, this too, either...

[*Latin ed. p. 285*]

SAVONEN. AND NAULEN. 285 Regarding the past, or the future, it is maintained that the debt must be paid, because "the Bishop, as a guarantor of the condition of the parish," as is read in the documents, has undertaken, for himself and his successors, the obligation of paying it. This point, which the patron seeks to demonstrate, observes that the Bishop has the legal authority over the administration of the goods of his diocese; and among other things, the Council of Trent, Session 22, chapter 8, on Reform, "decreed" that all things instituted for the worship of God, for the salvation of souls, or "for the support of the poor," the Bishop himself "by virtue of his office, must know and carry out." Therefore, since a pension of 130 livres has been imposed on a pious work, the administration of which, both legally and in fact, depends on the Bishop for the time being, it must flow freely, and although the pension was established by a predecessor, it must nevertheless also be upon his successor.

WHAT IS DONE AGAINST THE PAROCHIAL PRIEST. It has been observed that priests, by the very sacrament of ordination, become so subject to the Bishop that, if, without the consent of his Bishop, they abandon their own diocese, they can be punished by him with the interdiction of the sacred ministry, according to the tenor of the sixth constitution of the Council of Chalcedon, which was confirmed by the Council of Trent, Session 23, chapter 16, on Reform, and by the Council of Rome, title 6, chapter 6; indeed, the Council of Trent, in the aforementioned passage, "decrees that if a cleric abandons his place without the consent of the Bishop, he shall be forbidden to exercise the sacred ministry." These conciliar provisions are also in perfect agreement with the practice of the Holy See, as seen in the documents of Senogallien, August 16, 1592; Ostunen, January 20, 1616; and, as is fitting, the canonists agree, as found in Fagnanus, in the chapter "On Warnings Regarding Renunciation," numbers 15-17, who indeed maintain that the disposition of chapter 16 of Session 23 of Trent applies both to clerics who, without possessing any residentiary benefice, go outside their own diocese without the invitation of the Bishop, and even more so to those who, in the very ordination, are assigned to the service of a particular church. It has also been observed that a cleric, even if he has once left with the permission of his Bishop, does not therefore escape...

[*Latin ed. p. 286*]

286 SAVONEN. AND NAULEN. The entire authority [of the superior] is not considered to be entirely removed, nor is he considered to be entirely outside of his power; rather, he can even compel them to return through censures. As an example, consider the case of the Nucerina Residence and

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suspension of September 29, 1818. Therefore, if it is within the power of the local Ordinary, by law, to recall clerics residing outside of his diocese, even under the prohibition of exercising sacred functions, it seems even more evident that he can compel these same clerics, under penalty of ecclesiastical deprivation of their pension, if they receive one, to return to their residence. For according to rule 53 of the law, "what is permitted to him who can, is certainly permitted; but what is not permitted to him who can, is not permitted." Or, according to the words of L. Non debet 21 ff. de regni, iur. "He is not permitted to whom more is permitted, what is less is not permitted." This rule proceeds both positively and negatively, according to Reiffenstuel, Barbosa, and Vivian. However, the penalty of suspension is to be considered a very serious penalty, greater than any monetary penalty. And since the suspension, or deprivation of a pension, also concerns past time, there can be no doubt that the parish priest, Anthony, implicitly gave notice of his intention to remain in America, against the will of the Bishop, who had recalled him under penalty of the loss of his pension and support. It does not seem valid to oppose this with the theory of not taking away sustenance; since here, we are not dealing with the removal of sustenance, but rather whether someone can explicitly or implicitly give notice of sustenance, which was previously established for him. Regarding the support, it was noted that the Bishop, according to chapter 23 De praeb, is not bound by the actions of his predecessor, as the same modern Prelate asserts; and this is all the more so because otherwise, it would be to the detriment of the care of souls of the entire diocese. For the Bishop, for the time being, only disposes of annual sums of 721; from these, which are certainly meager revenues, many needs and various necessities must be met; so that each year, these revenues are not only consumed, but are not even sufficient.

[*Latin ed. p. 287*]

SAVONEN. AND NAULEN. 287. Truly, if a priest were in need, even with the aforementioned circumstances still present, it would certainly be necessary to have compassion for him; but, on the contrary, as is reported, the priest Anthony, returning from America after 28 years, became wealthy. Therefore, it would also seem that the reason for the assistance has ceased, as observed by Blessed Luke in *De gens. discept.* 4, n. 6: "The pension ceases, when the necessity of the pensioner ceases; for when the cause ceases, the effect ceases." Nor should this circumstance be judged only belatedly and for the future; since it existed and was considered even at that first time when the pension was denied to the priest Anthony by the Bishop of Oerruti. Having considered these things, the purpose was to determine whether, and from what time, the pension is to be paid to the priest Anthony in this case.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on August 22, 1885, decided to respond: "Affirmatively,

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regarding the pension from the day following its due date; regarding the assistance, from the day of his return."

FROM WHICH, THE FOLLOWING MAY BE GATHERED:

I. An ecclesiastical pension is assigned either in place of a benefice, so that someone may more easily be able to support himself, or because of a resignation, and in that case it is to be considered as a substitute for sustenance.

II. A pension, which takes the place of sustenance, is to be considered favorable or entirely privileged in law, and can even be recovered for past time; because it arises from a certain contract between the Bishop and the priest who resigns the benefice.

III. A pension may be lost through those crimes through which benefices are lost; however, the absence of the pensioner from the Diocese is not to be considered among the causes through which the pensions become vacant.

[*Latin ed. p. 288*]

288 BENEVENTO: CONCERNING THE ELECTION OF A CANON. August 22, 1885. Session 7, chapter 3, concerning reforms. SUMMARY OF THE CASE. The auxiliary bishop of the diocese of Benevento recently reported to the Apostolic See: In the year 1860, the abbey entrusted to the aforementioned church became vacant; the chapter, possessing the right to elect an abbot, designated three canons from whom the abbot was to be chosen, but elected Aloysius, who appeared to be unsuitable, setting aside, it seems, others who were more worthy. The elected man refused to accept the institution, although he repeatedly requested it, along with a dispensation from the examination due to the weakness of his abilities. However, when the elected man passed away on March 4, 1885, the chapter informed the Curia that they wished to proceed as soon as possible with the election of a new abbot. Therefore, the aforementioned Ordinary requested from the Holy See whether it would permit the aforementioned chapter to proceed with the election of a new abbot. SYNOPTIC DISCUSSION: Those considered unworthy of ecclesiastical benefices, besides the condemned, infamous, or irregular, are also those who lack the necessary knowledge to perform the duties attached to the benefice, according to chapter 7, § 2, concerning elections, and throughout the works of De Angelis in the title concerning elections. It is not possible to doubt that Aloysius, elected by the chapter, was such a person, given the alleged letters of the bishop. Furthermore, the matter concerned a curacy, to which, according to St. Thomas [II-II, q. 65, a. 2], one must always, and with great reason, prefer a more worthy candidate. This prescription of the law regarding the preference of the more worthy certainly applies to ecclesiastical patrons, in contrast to lay patrons, who, if they name a worthy candidate before a more worthy one,

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do not sin, as Ferraris states in *Jus Patr.*, n. 81: "An ecclesiastical patron is bound under mortal sin to present a more worthy candidate for benefices WHICH SEEM TO CONFLICT WITH THE CHAPTER."

[*Latin ed. p. 289*]

BENEVENTANA 2Ö9 > whether the curacy or parish is vacant, or whether the election takes place with or without a convocation. Therefore, it is certainly apparent that the chapter, having rejected two others who were certainly more worthy, chose a man lacking sufficient knowledge, and in every way unworthy. Furthermore, it is established in law that those who elect without due form are deprived of the power to elect for that one occasion, as stated in chapter *Quia propter De elect*. Similarly, it is provided that those who knowingly elect an unworthy person are deprived of the power to elect for that one occasion, chapter *Cum in cunctis*. There, it is stated: "Those who know themselves to be deprived of the power to elect at that time." See *De Angelis, Praelect. Iuris Can.*, book I, title 5 and 6, number 11. It is noteworthy that, if the electors are deprived of their power not by law itself, but by a judgment, it is said that they are "deprived" – as the commonly accepted Gloss observes: "deprived by judgment, not by law itself." However, in the case of electors who elect an unworthy person, they are, by the very law, deprived of their power, as is clear from the text of chapter *Cum in cunctis* 7 *De elect*, cited above. See Reiffenstuel, ibid., number 252. Therefore, if the chapter, in its judgment, has elected an unworthy person, it is already, without any further judgment, considered deprived of the power to elect for that one occasion. Consequently, the chapter seems to be acting against the law only if it attempts to claim the right to elect against the judgment of the Ordinary. For if any judgment were necessary, it would be the one that declares the unworthiness of the elected person. However, in this case, such a judgment could be considered superfluous, either from the confession of the elected person, who refuses to undergo an examination, or from his evident incapacity according to the judgment of the Ordinary. Moreover, the chapter cannot claim ignorance, as if it did not know the incapacity of Aloysius. Indeed, if he was listed among the capitulars, he could not have been unknown to his colleagues. Otherwise, those who allege ignorance in matters of election are required to prove it, as stated in chapter *Innotuit De elect* and the Gloss there, with Abbot n. 7 and the common decrees, *Acta*, volume XVIII, page O O X. 10.

[*Latin ed. p. 290*]

290 Benevento. Therefore, in either hypothesis, the chapter would not be able to exercise the right of election for the present circumstance; but rather, either the Ordinary or the Holy See. For when the patron falls from his right to nominate, that same right devolves successively to the Bishop, and then

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to the Metropolitan, and finally to the Holy See; Rota, par. 17, recent decision, number 13, section 2. WHAT SEEMS TO FAVOR THE CHAPTER. But on the other hand, the chapter observes that the election of Aloysius cannot be considered such as to incriminate the chapter and subject it to canonical punishment. For, from a lack of sufficient knowledge in the elected, it cannot immediately be argued that the electors have nominated an unworthy person, at least with regard to the effect of canonical punishment against themselves. Provided that the lack of sufficient knowledge is not due to those defects which are notorious and cannot be ignored. Therefore, the examination established by canon law was instituted, so that the capacity of those presented could be assessed, because the capacity or incapacity of someone may be difficult to ascertain from elsewhere. Thus, the chapter could have been ignorant of the unworthiness of Aloysius; and therefore, by that very fact, his election would not be subject to punishment. Moreover, since the electors, as well as ecclesiastical patrons, are deprived of the right of further nomination, unless they knowingly present an unworthy person; Ferraris, *De Iure Patronatus*, article 4, number 86. Therefore, maintaining that the presentation of Aloysius was, on the part of the chapter, blameless, they would seem to have the full right to a new nomination, even though a long time has passed since the previous one. The author Ferraris states, in the work cited, as follows: "If (an ecclesiastical patron) presents an unworthy person unknowingly and innocently... then, after the presentation has been rejected by the Ordinary, he has a new semester to present another, argument from chapter 1, section 26, *De Electione*; where the term of law for re-electing is granted, when those who elect choose an unworthy person through innocent ignorance, whose election, because of the defect so ignored by the electors, is annulled. Thus, the common Doctors, with Lambertini, part 1, book 2, page 10.

[*Latin ed. p. 291*]

BENEVENTANA 291 art. 4 n. 15, Fagnanus in the aforementioned work, and with you, number 32, the Abbot in the same work, number 5, John Andrea in the same work, number 13. "From which it would seem that he has not lost his rightful claim. And although it appeared that he had not been nominated by himself, nevertheless, he could suppose that this would happen due to the difficulties of the times and other causes hindering the process. Furthermore, it was not permissible to nominate another chapter until the election of the previous one had been rejected; hence, it seems just that the same chapter should invoke that well-known saying: 'It should not be imputed to him through whom' it does not stand, if he does not do what was to be done through him.' Heg. 41 iur. in VI. Finally, even if it were granted that the election by the chapter was made of an unworthy person, and knowingly, nevertheless, in practice, it would not seem to be rejected by a new election. Reiffenstuel notes in title De elect. n. 258, together with

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the Abbot, chapter: 'Since in all cases, those who knowingly choose an unworthy person are not deprived of the right to choose,' the right to choose remains throughout the entire vacancy of the prelature, 'but only in the first election that occurs there, whether it has effect or not; it is sufficient that they were deprived in one election, which is the one immediately after the election of the unworthy person, and thus, in order, the fault of their action is purged.' With these considerations in mind, the purpose is to resolve the doubt: Whether the election or nomination of the Abbot pertains to the chapter in this case.

RESOLUTION. The Sacred Council, having knowledge of the matter on August 2nd, decided to respond: Affirmative, and furthermore.

FROM WHICH IT IS UNDERSTOOD:

I. Patrons of the church are legally deprived of the right to a further nomination if they knowingly present an unworthy candidate for the benefice; and in that instance, the power to freely confer the position can be freely transferred to the Ordinary.

II. However, the situation is different when the electors, through an excusable ignorance, present an unworthy person; then, in that case, they are not deprived of the right to choose.

[*Latin ed. p. 292*]

292. In BENEVENTANA, si postulatio ad ordinacione repulsa est, habent semestre novum ad aliam postulacionem praesentandam. III. Electores, saltem quod poenam incurrendam attinet, potuerunt, absque culpa, ignorantiam habere de indignitate electi; cum capacitas promovendorum, ex iure canonico, per examen cognoscenda sit; et ideo non potuerunt iure privari aliae praesentationis, dum prima praesentatio formiter a Ordinario repulsa non videretur.

ISERNIEN. DISTRIBUTIONUM. Die 13 Iunii 1885. Per summaria precum.

COMPENDIUM FACTI.

Episcopus iserniensis supplicem libellum Sacrae Congregationis Consilii obtulit die 7 Februarii anni 1885, in quo exposuit: Capitulum suae Cathedralis admittere, ex immemorabili consuetudine, ad incertorum participationem etiam illos, qui infirmitatis vel parentum mortis causa haud intersunt eiusmodi extraordinariis functionibus et cadaverum associationibus. Attamen quaesivit an consuetudo haec manuteneri possit; et quatenus affirmative, an iisdem incertis frui valeant etiam canonici iubilatione donati, cum infirmitate detineantur, aut per obitum parentum praepediantur. Requisito autem Episcopo, ut audiret in scriptis capitulum,

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hoc non modo testatus est de consuetudine existenti in illa Cathedrali ab immemorabili, sed ulterius oravit, ut inveterata haec consuetudo servaretur et probaretur.

Disceptatio Synoptica.

CONSUETUDO IMPROBANDA VIDETUR.

Ita vero, in primis, animadverti potest receptum generaliter esse atque a Sacra Congregazione Consilii probatum existere, ut canonici, qui iubilatione gaudent vel legitime sunt absentes a choro, eas distributiones omnes percipiant, quae proveniunt ex anniversariis fixis, dummodo...

[*Latin ed. p. 293*]

ISERNIA. 293. The will of the testator must not be disregarded; however, benefits derived from funerals and anniversaries, and other uncertain and extraordinary matters, are not to be included, as can be seen in Aquilana, April 6, 1719; in Spoletana, November 29, 1770; and in Lucana, November 27, 1852, as proposed through summary proceedings and other means. The reason is that extraordinary distributions require the actual presence of the canons; Pitonius, Disputations, 1, n. 35; Sacred Congregation of Councils, in Pisana, June 3, 1843; in Terracina, or Priverna, December 23, 1826; in Cagliari, September 17, 1831, §. Quod. Therefore, according to these rulings, the practice of the Isernia Chapter of distributing revenues from funerals and uncertain feasts to canons who are not actually present would be disapproved, even though they are legitimately absent from the choir.

CUSTOM TO BE APPROVED. However, on the other hand, the Sacred Congregation of Councils, in Aquilana, June 16, 1745, in response to the question: "Whether a canon who has been appointed should enjoy all benefits," replied: "All benefits should be granted, except those which, either by the will of the testator, or by the statutes and customs of the church, are due only to those who are actually present." And in Savona, December 18, 1745, it is stated that in that cathedral church, a custom had been established and was in use, according to which canons who were prevented from participating due to illness or other reasons should share in all distributions and benefits, as if they were truly present; and the Sacred Congregation did not condemn this custom but upheld it; for in response to the question: "Whether the canon Picconi, during his illness, could participate in all distributions, both ordinary and extraordinary, and in all other benefits and revenues, as the other canons who are present in such cases," it replied: "Affirmatively, except for those which, either by the will of the testator, or by the statutes and customs of the church, are due only to those who are actually present." But in our case, the custom is favorable to canons who are

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legitimately absent from the choir, according to what has been said above.

[*Latin ed. p. 294*]

294. ISERNIEN. After these matters had been noted, the question was raised as to how doubts and petitions should be handled. RESOLUTION. The Sacred Congregation of the Council, after deliberation on June 13, 1885, decided to respond: To the first and second questions, affirmatively, provided that the will of the donor or founder is not thereby hindered. FROM WHICH IT IS UNDERSTOOD: I. It is possible to maintain the venerable custom by which Canons, whether or not they are present, may enjoy all ordinary and extraordinary benefits, insofar as they are prevented from attending due to illness or the death of their parents, provided that the will of the donor or founder is not thereby hindered. Regarding the Jubilee of St. JAMES of Cuba concerning the faculty of the Bishops of the Province of Cuba to have a voice and a decisive vote in the Chapter. On July 1, 1885. SUMMARY • FACTS. In Article XIV of the agreement initiated in the year 1851 between the Apostolic See and the Queen of Spain, it is established that "whenever a Bishop presides over a cathedral chapter, he shall have a voice and a vote, and furthermore, his vote shall be decisive in the case of a tie of votes, commonly called 'empate'." Since the last part of this article did not apply to the Bishops of the Cuban Province, beyond the sea, the Metropolitan Archbishop of Cuba, St. James of Cuba, firmly believing, on October 6, 1879, that the faculty of deciding the aforementioned tie of votes was most necessary for the dignity of the Episcopal office and to avoid the evils that would occur in an undecided case, earnestly requested the Supreme Moderator of the Church to deign to declare or grant that the Bishops of the Cuban jurisdiction should have the aforementioned faculty, in the same way that the Bishops of Spain have it. The Cuban Archbishop, when asked, transmitted the votes of his suffragans and chapters on July 2, 1881, and also...

[*Latin ed. p. 295*]

Saint James of Cuba, in paragraph 295, stated that Bishops should have a voice and vote in the Chapters, 1. at least by custom; 2. by the erection of these churches according to present-day law, which grants such a voice and vote; 3. but that they should have this, with the knowledge and without contradiction from the government, indeed, rather with its approval, as is evident from the royal decree of September 30, 1852, in which it is stipulated that certain appointments must be made by the Archbishop together with the Chapter. The Apostolic Nuncio, likewise consulted, after considering the aforementioned premises, replied that it seemed untimely to extend Article XIV of the Concordat between the Kingdom of Spain and the Holy See to the Bishops of the Cuban Province, unless the Spanish government first knew about the subject matter, in order to prevent difficulties that

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might likely arise with the passage of time. After these considerations and responses, especially those of the Most Reverend Nuncio, a letter was sent to the Apostolic Nuncio of Spain, instructing him to take steps with the royal government to provoke a decree by which the aforementioned Article XIV of the Concordat would be extended to the Bishops of the Cuban Province, on behalf of the government. The Apostolic Nuncio immediately complied with these instructions, and the matter proceeded favorably, as can be seen from his responsive letters of October 11, 1884. He obtained a royal decree by which the concession made in 1879 solely to the Archbishop of Cuba was extended to the entire province of the Island of Cuba and Puerto Rico. Through this provision, the civil government had presumed to grant the Prelate the faculty of having a voice in the Chapter with regard to all matters that did not directly concern the person of the Ordinary; and a decisive vote in the case of an equal number of votes. Having explained the difficulties on the part of the civil authority, the Nuncio stated that he considered the requested extension to be permissible by inserting the first part of Article XIV of the Concordat of 1851, which is in accordance with common law, into the preamble of the concession, and by using the very words of the Concordat itself, which the civil authority itself had used in the aforementioned.

[*Latin ed. p. 296*]

296 Concerning the disposition of St. James of Cuba; and these are: "Whenever the Archbishop and Bishops are present at a chapter, they shall have a voice and vote in all matters that do not directly affect their person; and furthermore, when the votes of the chapter are equal, the Bishops shall decide the matter." Therefore, since no difficulty is to be feared regarding the application of the aforementioned article 14 of the concordat, with respect to the Spanish Government, and indeed, secular authority can easily provide some assistance, the question was put to the Congregation of the Holy See as to whether, according to ecclesiastical norms, such an extension of article 14 of the concordat to the Bishops of the Cuban Province would be appropriate. RESOLUTION. The Sacred Congregation, after discussion on July 1, 1885, decided to respond: According to the opinion of the Apostolic Nuncio. EDICT OF EXCARINATION. On May 16, 1885. SUMMARY OF THE CASE. A young man from the Diocese of Theatine, almost fifty years of age, who, as a young man, had devoted himself to studies for seven years in the seminary of Lanciano, and then had abandoned the clerical state, petitioned his Archbishop to allow him to once again put on ecclesiastical vestments and to be promoted to the Holy Orders after completing his studies. The Archbishop granted his request, but imposed a condition on the petitioner, that he should go to Naples to more fully learn the sacred sciences. Considering himself burdened by this condition, Filenus appealed to the Sacred Congregation, requesting that it

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would deign to grant him a dispensation from the law of the Innocentian Constitution "Speculatores," and also to grant him excardination from the Diocese of Theatine, so that he might be transferred to Lanciano to complete his studies and to receive the Holy Orders. Synopsis of the Discussion. ARGUMENTS FAVORING THE PETITION. It must indeed be considered that Filenus is not endowed with a large fortune; therefore, in Naples...

[*Latin ed. p. 297*]

THEATINA 297, being about to depart far from his ancestral home, perhaps did not have wherewithal to sustain his life; especially since he has at home a sister who is unmarried, ailing, and in need of her brother's assistance. Therefore, having denied him leave for excommunication, nothing remains for him but to renounce his vocation, which seems to be a very grave matter. It must also be noted that the Sacred Congregation of the Holy Office has, in certain cases, derogated from the Innocentian Constitution, especially if a cleric had found a benevolent recipient and if the receiving Church was in need of priests, as happened in Neapolitana on February 15, 1848; in Burgos, near the Sepulchre, on February 23, 1875; in Aniden on March 23, 1878; in Vercelli on July 9, 1881, etc. All of these things are clearly verified in this case, since the Bishop of Lanciano desires to receive Fileno into his diocese, which is lacking in clergy. THIS INDICATES THAT GRACE SHOULD BE DENIED. However, on the other hand, it is equally true that it is not permissible to diminish the rights of the Bishop of originis, except rarely and for a very serious and well-proven reason. But this is entirely lacking in our case, as the Ordinary of Theatrina indicated, saying: "I do not consider Fileno's excommunication to be necessary; and if I have endeavored to persuade him to seek studies in Naples, it is because I lack a seminary, and in order to fulfill the wishes of the Most Holy Father Leo XIII, who, in his Encyclical of February 15, 1882, speaking of the doctrine of the clergy, used these words: 'Not common, nor mediocre, but exquisite and varied.' " The Orator, being already fifty years old, could not be enriched in his homeland or in the city of Lanciano, either in ecclesiastical customs or in the necessary science, because there are lacking studies there concerning philosophical and theological sciences, which would correspond to the wishes of the Holy Father. With these things noted, the question was raised as to how the Orator's requests should be granted. RESOLUTION. The Sacred Congregation, after review, on May 16, 1885, decided to respond: "He should rejoice in obtaining the consent of the Ordinary to pursue his studies in the seminary of Lanciano."

[*Latin ed. p. 298*]

298 FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF SUBLACEN. CONCERNING PAROCHIAL RIGHTS,

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dated September 25, 1885. At the beginning of the month of November, and precisely on the 2nd day of the year 1884, the Venerable Sodality of Saint Mary of the Dead, established in the church of the same name, located near Moran, seized the opportunity of the commemoration of all the deceased, and in the aforementioned church, it carried out an exposition of the Blessed Sacrament for forty hours, received alms collected from the faithful, celebrated a Mass for the repose of souls with singing, and administered absolution. This came to the attention of the Archpriest of the Town of Moran, who, believing that all these things had been unjustly carried out by the Venerable Sodality, and that his rights had been usurped, appealed to the ecclesiastical court of Sublacen. However, on March 15th of the following year, with the aforementioned functions being renewed without impunity by the same sodality, he appealed to the Sacred Congregation of Bishops and Regular Canons, requesting that his rights be defended.

SUMMARY OF THE CASE.

SYNOPTIC PRESENTATION OF THE ARGUMENTS PRESENTED BY THE ARCHPRIEST.

The Archpriest argued that the aforementioned functions could not have been carried out by the Sodality of Saint Mary without dependence and with the license of the Archpriest himself, and he first pointed out that all the churches existing within the confines of his parish are subject to the parish priest for the time being. He sought to demonstrate that the Church of Saint Mary is subject to this kind of subordination and dependence more than other churches, based on a certain passage from an ancient inventory, which was renewed by the Archpriest of the Town of Moran in the year 1841, during the act of the Visitation, carried out by the Most Reverend Abbot Spinula. Indeed, in the aforementioned passage of the inventory, among other things, the following is written: "This church (of Saint Mary) is destined for any income..."

[*Latin ed. p. 299*]

SUBCHAPTER. 299 is safe, because all of its goods were given to the parish of St. Blaise; therefore, the Archpriest, with piety and prudence, governs and directs it as his own, and the faithful's alms and assistance are directed towards it. He ought not to cede its administration to the chaplains. From the aforementioned words, the Archpriest concludes that the aforementioned church is to be considered a filial church, morally annexed to his parish church, and therefore the right over it belongs to him. Therefore, the resolution II of the Decree of Urbis et Orbis of December 10, 1703, which stipulated that lay confraternities established in chapels, oratories, both public and private, annexed to and dependent on parish churches, should

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be subject to the parish priest in the performance of non-parochial ecclesiastical functions, is applicable in this case, and the clause in the decree should be invoked in its favor, which reads as follows: "And so, saving the conventions and agreements perhaps made in the erection of the confraternities, the concord begun between the parties, and the indulgences approved by the Holy See, the synodal and provincial constitutions, and the immemorial, or at least centennial, customs, it is declared and decreed." Furthermore, it is argued that such a right could have been granted to the sodality for the good of its members, because there is nothing to suggest that a cession of property has taken place; because, when the parish priest of Aleandri established the aforementioned sodality in the year 1852, and gave it the rules by which it would be governed, he reserved all rights over the church for himself at that time, and granted the sodality no right other than the faculty of holding sessions in the aforementioned church and reciting the Rosary; and finally, because in Chapter 1 of these rules it is written: "The Archpriest for the time being shall be the moderator of the Sodality by right." In addition, he adds that the venerable sodality has never had a chaplain until recently; that the sacred functions have never been performed independently of the parish priest in the church; and finally, the Archpriest pro-

[*Latin ed. p. 300*]

300 SUBMISSIONS. [There were] obstacles [that] prevented the sacred functions from being performed there, when the confreres, without dependence on the parish priest, presumptuously undertook to perform them; as is evident from the decree issued by the Most Reverend Abbot at the time on May 24, 1884, in which it was decreed: "The church of the Dead in the town of Morani is dependent on the parish priest, and therefore the confraternity must undertake to agree with the parish priest regarding the functions that it desires to celebrate in said church, in accordance with the decrees of the Holy Roman Congregation." Furthermore, to strengthen its rights, it recalls that a certain Onofrio, a Baron of Morani, had left to the parish priest two measures of wheat annually, as compensation for the sacred functions that he alone was obliged to perform: Moreover, the Most Reverend Spinola, having completed the visitation in the year 1840, confirmed the mortuary rights pertaining to the parish priest of Morani with regard to the church of Saint Mary of the Dead, thus stipulating: "That these parochial rights should always remain fully intact." From all these points of law and fact, it can be concluded that the venerable Sodalitas of Saint Mary cannot, without the permission of the parish priest, perform sacred functions. It is, however, false, it says, that the confraternity would claim any right, either of co-ownership or of patronage, based on partial restorations of the church, obtained through offerings from the faithful; since such acts of generosity do not destroy the nature of sacred and conse-

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crated things. For once dedicated to God, it cannot be transferred to other uses. In confirmation of this, Cardinal Fusco is cited in conclusion no. 10, with the words: "Although the building may give way to the earth, it is otherwise with the Church, because the earth yields to the Church." And in conclusion 22, he adds: "Even if a new church is built without the permission of the Bishop, by laymen alone, it yields to the Church," and cannot be reduced to profane uses, but can be reclaimed by the Bishop, especially if the Mass has been celebrated therein.

HOWEVER, the Sodalitas of Saint Mary of the Dead maintains that the church of Saint Mary is independent of the parish priest, for the altars and hearths.

[*Latin ed. p. 301*]

SUBMISSIONS. 301. It is asserted that a sodality can perform sacred functions without the permission of the parish priest; firstly, because the parish priest, not having the right to possess two churches, must be content with the one granted to him in substitution for the first, which was considered abandoned, and which remained rural until the year 1852; secondly, especially because the aforementioned church would not have been adequate for the needs of the sodality, unless the confreres themselves had rebuilt it with their own money. Furthermore, it is asserted that the patronage can undoubtedly be acquired "by the simple restoration, or rebuilding, of a church, with its original endowment remaining, when it is established that it had been completely destroyed, or at least was in such a condition that it required a new construction"; Lambertinus de Jure Patron, lib. 1, quaest. VI, art. 3, n. 14; and Card. De Luca, disp. XL, n. 12 et seq. The situation, as it stands, is said to be contrary to ecclesiastical practice to assert that the parish priest is subordinate to the church which the sodality restored or rebuilt, and that it is contrary to the law that confreres cannot perform non-parochial sacred functions without dependence on the parish priest. It is also asserted that it is equally false that, on the contrary, the parish priest of Aleandri reserved all and singular rights over the church in the year 1852. Indeed, it is established that this parish priest was prodigal in his favor towards the aforementioned church, fostering divine worship and piety by willingly accepting the office of chaplain, and that the sodality, from that time, performed festivals and other functions continuously and freely for a period of 32 years. Therefore, even granting, but not conceding, that the parish priest had a right over this church, such a right, for so many years, has been prescribed by the favor of the sodality, especially because we are dealing with non-parochial rights, which can be prescribed by the passage of a long period of time, as stated by Schmalzgrueber, tit. XXV, de praescriptione, because everything can be acquired by prescription, as stated in leg. omnes ff. de praescr., Engel de consuet., n. 14, Genuen. prax.

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Cur. Neap., cap. 51, n. 2. Therefore, the present Archpriest should be heard.

[*Latin ed. p. 302*]

302 SUBMISSIONS. It is urged, because the alleged dependence and subjection of the Church to the statutes of the Sodality, approved by the ecclesiastical court, are contradicted, since it is written therein that the chaplains elected belong to the Sodality, and that the chaplain has the right to perform sacred, non-parochial functions in the Sodality's oratory. But, what is more revealing, the celebrated dependence and subjection concerning sacred functions, seems to be excluded by the aforementioned Decree of Urbis et Orbis*, which prescribed that those sodalities should be subject to the parish priest, which are either erected in parochial churches, or in churches annexed to parochial churches; but not those which are found in other public churches. Indeed, regarding the third question: Whether confraternities erected in other public churches have any dependence on the parish priest, within whose parish boundaries the churches are located, the Holy Roman Church responded: Negatively. Therefore, since it is clear from the facts that the Church of the Dead, in which the Sodality was erected, is separate from and distinct from the parochial church, it follows that the Sodality should have no dependence on the parish priest regarding sacred functions. Regarding the exposition of the Most Holy Sacrament, in the eleventh question of the aforementioned decree, it was asked: Whether the exposition of forty hours and the blessing given over the people, pertain to those purely parochial rights? And the Holy Roman Church likewise responded: Negatively. This resolution is in conformity with the brief *felicior memoriae* of Pope Pius IV, dated February 7, 1560, in which it was decreed that in the oratory where the Eucharist is reserved, the right to expose the Most Holy Sacrament, to give communion to the confreres, and to perform other functions belongs to the chaplain. And the practice of the Sacred Congregation is not contrary to these established principles of law, but rather is most in conformity with them, as can be seen in several resolutions, especially in the case of the "Rights of the Parish" of Fermo, dated June 2, 1736, in which a dispute was being held concerning two parish priests and the Sodality of the Divine Grace, as to whom the right belonged to perform the functions.

[*Latin ed. p. 303*]

ST3BLA.CEN. 303, concerning the matters to be fulfilled, in churches existing within the boundaries of their parishes. The parish priests petitioned the Holy Congregation to decree that these functions should be performed only by orators, even in the church of the sodality, which, with the help of God, was built within the boundaries of their parishes, because, as they stated, they had hitherto been accustomed to perform these solemn functions not only in their own parochial churches, but also in all others

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existing within their boundaries. Conversely, the confreres argued: "Chaplains and other priests" should be freely appointed by them for the service of said church, and without any permission from the parish priests, they should be able to: a) celebrate the solemn Masses; b) expose the Most Holy Sacrament of the Eucharist for the public adoration of the faithful, and bestow blessings upon the people; c) and also, according to the faculty granted by the Archbishop, to bury the bodies of those who have chosen burial there. Therefore, having considered these doubts raised concerning these matters, the Holy Congregation, with the general favor of God, issued a judgment. Documents from Hortana, concerning parochial rights, dated August 1, 1739; from Asculana, dated August 8 and 29, 1733; from Priverno, concerning the construction of the church, dated September 24, 1735, and many others. Finally, for another reason, the Confraternity of Saint Mary claims independence from the parish priest and the right to freely perform sacred functions without the permission of the parish priest, because, indeed, when the Archconfraternity of Saint John the Baptist of this esteemed city was aggregated in the year 1852, it enjoys all the indulgences and privileges concerning sacred functions, specifically and expressly those with which the Archsodality has been enriched by the Supreme Pontiffs. Thus, it was defined by the Holy Congregation in the Novarien, dated September 3, 1718, in which, concerning the doubt: "Does the aggregated Confraternity enjoy only the indulgences, or rather also the privileges of the aggregating Archconfraternity?" the response was: "It enjoys the indulgences and privileges of the aggregating Archconfraternity." Similarly, in Savona, in the document concerning the aggregation, dated January 9, 1699, and in other places as well. Therefore, having explained these matters, the proposals were presented to the Sodality.

[*Latin ed. p. 304*]

304. DECREE. Doubts. I. Whether the Brotherhood of Saint Mary of the Dead, when performing non-parochial liturgical functions, is independent of the parish priest in such a case? II. Whether and how the same Brotherhood can expose the Most Holy Sacrament for the Forty Hours without the permission of the parish priest in such a case? RESOLUTION. After having considered the matter, the Most Reverend Bishop and the Regional Council, on September 23, 1885, decided to respond as follows: To the first question: Affirmative. To the second question: Affirmative, with dependence on the Ordinary. FROM WHICH THE FOLLOWING CAN BE GLEANED: I. That the right of patronage can be acquired by a simple restoration, or rebuilding, of a church, provided that it is demonstrated that the church was completely destroyed, or at least found in such a condition that it required new construction. II. That everything can be acquired by prescription, which is not expressly prohibited from being acquired over a long period of time. III. That lay brotherhoods are dependent on the

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parish priest in the performance of ecclesiastical functions, whether they are established in parochial churches or those annexed to them; however, those brotherhoods that are found in other public churches do not have any dependence on the parish priest with regard to those same functions. IV. That the exposition of the Forty Hours, and the blessing given over the people, are not matters of mere parochial rights; therefore, they can be performed by sodalities that are established in churches that are distinct from or separate from parochial churches. V. That sodalities affiliated with an Archconfraternity enjoy the indulgences and privileges of the affiliated Archconfraternity. VI. That the Sodality of Saint Mary of the Dead has been declared to be independent of the parish priest in the performance of sacred, non-parochial functions; therefore, it can perform the exposition of the Forty Hours without the permission of the parish priest, because the church in which the aforementioned sodality is established is separate from the parochial church.

[*Latin ed. p. 305*]

305 Letters from His Holiness Pope Leo XIII to the Bishops of England, in which he congratulates them on their zeal in opening Christian schools. "Your faith and singular piety towards this Apostolic See shine forth marvelously in the letters which We have recently received from you. These are all the more pleasing to Us, because they confirm what We already knew, that a great part of your thoughts and endeavors are devoted to a matter of such importance that We believe that even greater efforts should be undertaken for it. We understand the Christian education of your young people, about which you have recently, after deliberation, decreed some useful things, and have considered it proper to refer them to Us. It is a pleasing thought to Us that you, Venerable Brothers, are not alone in this work of such importance. For We are not unaware of how much in this regard is owed to the entire order of your priests; who, with the greatest charity and unwavering spirit, have taken care to open schools for children; and who, having undertaken the task of teaching, devote their efforts with admirable industry and diligence to instilling Christian morals and the fundamentals of learning in the youth. For this reason, may your clergy continue to strive to merit well in the upbringing of children, and may they enjoy Our singular commendation and benevolence, and may they expect even greater things from the Lord God, for whose sake they toil. We also deem the benevolence of Catholics in the same endeavor worthy of no less praise. For We know that they are always ready to provide whatever is needed for the support of schools, and they do so not only those with greater means, but also the poor and the needy; and it is a beautiful and very great thing that, often even in their own poverty, they are willing to contribute what they can to the education of children. Indeed, in these times and conditions, when the tender years of children are beset by so

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many dangers from all sides, and by such varied influences, it is hardly possible to imagine anything more opportune than that a literary institution should be joined with the seed of faith and the instruction of morals. Therefore, We have repeatedly declared that We strongly approve of those schools which are called "free," which have been established in France, in Belgium, in America, and in the colonies of the British Empire, through the efforts and generosity of private individuals.

[*Latin ed. p. 306*]

306 We desire that these institutions may not only continue, but may increase and flourish in the number of students. And We ourselves, having observed the condition of affairs in the city, do not cease to take the greatest care, and to incur considerable expense, that these schools may abundantly provide for the Roman children. For in them, and through them, is preserved that greatest and best inheritance which We have received from our ancestors, namely, the safety of the Catholic faith; and moreover, provision is made for the liberty of parents; and, which is most necessary, especially in these times of such license of opinions and actions, the morals of the citizens are cultivated for the good of the Republic; for no one is better than he who, from his youth, has embraced the Christian faith in belief and in practice. The beginnings, and as it were, the seeds of all humanity, which Jesus Christ divinely brought forth for the human race, consist in the Christian education of young people: for no states can be more prosperous than those whose young people are formed by the first institution. Therefore, that pernicious error which desires that young people should grow up without any religious instruction destroys all wisdom and inflicts a wound upon the very foundations of the state. From this, Venerable Brothers, you understand how much it is necessary for parents to take care, lest they entrust their children to literary pursuits in which they cannot receive instruction in religion. As for your Britain, We know that not only you, but many of your people, are not inconsiderately concerned about the religious education of young people. Although they may not agree with Us in every respect, they nevertheless understand how important it is, both privately and publicly, to preserve the inheritance of Christian wisdom, which your ancestors received from Gregory the Great, Our predecessor, through Saint Augustine, and which, although subjected to violent storms afterwards, was not entirely destroyed. We know that there are still many, of excellent character, who diligently strive to preserve the ancestral faith, and who do not yield meager fruits of charity. When we think of this, we are always moved: for we pursue with paternal charity that which is deservedly called the "Isle of the Saints"; and in that character of mind which We have mentioned, We see great hope, and a kind of pledge, for the salvation and prosperity of the Britons. Therefore, persevere, Venerable Brothers, in taking special care of the young; urge in all parts of your diocese the work

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of your ministry, and whatever you perceive to be good seeds, cultivate them with alacrity and confidence; and the God who is rich in mercy will give growth.

[*Latin ed. p. 307*]

LETTERS 307. A testimony to Our benevolence and the auspiciousness of heavenly favors: "We impart to you, and to your clergy and people, Our Apostolic Blessing in the Lord. Given at Rome, near St. Peter, on the 27th of November, in the eighth year of Our Pontificate. LEO XIII, POPE. LETTERS from Our Most Holy Lord to the Most Reverend Father General of the Order of the Friars Minor. Beloved son, greetings and Our Apostolic Blessing. We have received with considerable joy the news that you had decided to undertake the complete edition of the works of the Seraphic Doctor; and now we are most pleased to learn that you have happily set your hand to the execution of this plan. For we have considered that, at the very beginning of Our Pontificate, nothing would be more fitting to combat the errors of Our times, nor more efficacious to confirm the truth, than that the wisdom of the excellent Master of the Scholastics should flow far and wide; and for this reason, We have ordered that a complete edition of his works be published. Therefore, we cannot sufficiently praise your intention, by which the Catholic youth might be encouraged to study the scholastic disciplines with greater zeal through the dissemination of the writings of St. Bonaventure. — How much necessity, how much sanctity, and how much similarity of doctrine existed between St. Thomas and the Seraphic Doctor, is evident to all. And Our Predecessor, Pope Sixtus V, truly affirmed that they are "two olive trees and two candlesticks in the house of God, shining, who, with the richness of charity and the light of their science, illuminated the whole Church of God, and that they emerged at the same time, as if "two stars rising from two most illustrious families of religious orders," most useful for defending the Catholic religion, and always prepared to undertake all labors and dangers for the orthodox faith." Therefore, we wish to testify that we have gladly accepted from you the volumes of their works, as the first fruits of the entire edition, and that we hold in high regard the labors which your religious men of the Order have undertaken since 1877, in the College of St. Bonaventure, to accurately complete this work of such importance, entrusted to them by your authority.

[*Latin ed. p. 308*]

308 LETTERS. The praise of a faithful member of your Order, Brother Ignatius, a man distinguished by his knowledge and piety, cannot be omitted; who, having collected codes from all over Europe, and with the utmost diligence applying the rules of the critical art, for a period of ten years, prepared a most accurate edition of these works. After his death, we have recognized that Brother Ignatius Jeiler, with equal dedication and the same

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counsel, is engaged in similar work. — Not only is his judgment prudent in the selection of individual texts, but also his careful emendations of the text and the best form of the letters are to be commended. Above all, it has pleased us that he intends to add appropriate notes or scholia to each book, so that the harmony of doctrines may be clearly manifested, as we have said before, by which the minds of those two eminent Doctors were instructed. From this, it is clear that these most distinguished defenders of the scholastic disciplines, with keen intellect, constant study, great labors, and vigilance, have transmitted to posterity a precious treasure of doctrine, gathered by wise men of former ages, and especially by the Fathers of the Holy Church, and increased in many ways. — Therefore, there is no doubt that Catholic young men, especially those who are growing in hope for the Church and who devote themselves to the study of philosophy according to the doctrine of Aquinas, will find the works of St. Bonaventure to be of the greatest benefit, and that they may take swords and shields from the writings of both, with which they may bravely overcome the enemies in the most terrible war against the Church itself and human society. — Therefore, these things which we have written, may be a source of comfort and encouragement to you, dear son, and to the members of your Order, who are devoted to the College of St. Bonaventure, so that they may diligently continue the work they have begun. As a witness of our special affection and as an omen of heavenly blessings, we impart to you and to them, with all our heart, the Apostolic Blessing. Given at Rome, near St. Peter's, on the 13th of December, in the eighth year of Our Pontificate. LEO XIII. To our beloved son, Father Bernardino from Porto Romano, of the Order of the Friars Minor, General Minister.

[*Latin ed. p. 309*]

309 FROM THE CONSISTORY ACTS Concerning the Consistory held on January 15, 1866. In the Apostolic Palace at the Vatican, a secret Consistory was held, in which the Most Eminent and Reverend Cardinal Simeoni presented and delivered the Scepter of the Sacred Congregation of Cardinals of the Holy Roman Church to Our Most Holy Father, the Pope, who entrusted it to the Most Eminent and Reverend Cardinal Bartolinio for the present year as Treasurer of the aforementioned Sacred Congregation of Cardinals; and afterwards, the following took place: THE ADDRESS OF HIS HOLINESS, POPE LEO XIII. Venerable Brothers. Although the matter about which we are about to speak is already known to all, nevertheless, because it is connected with the common good of the nations, and because it renews a custom honorable to the Apostolic See, a custom long since interrupted, we deem it fitting to speak of it to you here, in this most august assembly, by Our own mouth. Last September, when both the Emperor of Germany and the King of Spain had simultaneously requested that We undertake the role of mediator in the dispute concerning the Caroline Is-

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lands, We gratefully and willingly accepted this task entrusted to Our care, because Our efforts seemed to be able to contribute something to concord and to the benefit of mankind. Therefore, after considering the matter carefully and with sincere and impartial judgment, We were able to indicate certain foundations for a possible agreement, which We believed would be acceptable to both parties. Spain, indeed, defended its right in those Micronesian regions in many ways: by the nation of those who first arrived at those shores; by the testimony of the most important geographical writings; by the very name "Carolines," of Spanish origin; and finally, by the fact that apostolic men had been sent there more than once by their kings. This last point is connected with and linked to the memory of the Roman pontificate. There exists a letter from Clement XI, Our predecessor, to Philip V, dated 1706, in which the king is praised.

[*Latin ed. p. 310*]

310 FROM THE CONSISTORY ACTS, it is stated that a ship was provided for the journey and all necessary supplies were furnished to the Missionaries destined for those islands; furthermore, he urges that the Christian name be spread and that assistance be given to the eternal salvation of so many people. The same Pontiff requested of King Lewis XIV of France, through letters, that he not hinder Philip V, his nephew, from completing what had been well begun. Moreover, Philip himself had contributed annual revenues of two thousand crowns to the support of that sacred expedition; furthermore, he had been singularly diligent in promoting the conversion to religion of the inhabitants of Spain, without anyone's intervention; finally, that what was known about the customs and morals of the islanders was made known to the apostolic men, as authoritative. From this series of events, if one examines the laws of the time that were in force when these matters were being dealt with, it is quite certain that Spain held authority over the Caroline Islands. Indeed, if the right to rule over uncivilized peoples is properly considered, it certainly seems that he who strove to liberate them from superstition and bring them to the Gospel, would have brought the greatest light of humanity, since all aspects of civilized life, including religion, are considered essential. Such principles have often established empires, especially in many islands of the Ocean, of which not a few derive their very name from religion. Therefore, since the opinion that the Caroline Islands were under the power of Spain had become established and accepted, it is not surprising that, when a sudden dispute arose over their possession, the Spanish people were so incensed that neither domestic tranquility nor foreign friendship seemed possible. However, in general, the Germans opposed this claim on the grounds of law, arguing that land must be acquired through conquest. And, if certain recent events are considered, this seems to be in accordance with the law of nations, that legitimate authority over land is generated by occupation and

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use; occupation and use, as long as they continue, are equivalent to the land being the property of no one. Then, if one considers the facts, since Spain had relinquished possession of the Carolines for a period of half a century, it would seem that it should be awarded to the one who first occupied it. Furthermore, in the year 1875, when there was a disagreement in a not dissimilar case, Germany and Great Britain declared that they would not recognize Spanish claims over the Carolines. Therefore, with minds moving in opposite directions, we have tried to prevent greater discord, and, having considered the rights and advantages of both nations, we have confidently indicated what seemed to us the most suitable way to achieve lasting harmony. Equity.

[*Latin ed. p. 311*]

From the Consistorial Acts, we have followed the leader, and both parties, as you know, readily agreed to those conditions which We proposed. Thus, what seemed scarcely possible, given the current state of opinions, has been accomplished by the divine providence, so that the supreme authority of the Church might bear witness, through two great nations, to its power, and, which is most proper to its office, might effectively safeguard peace and concord between them. This is indeed a salutary and beneficial thing to be emulated, a virtue which God has bestowed upon the supreme Pontiffs, and which, despite the greater envy of enemies and the wickedness of times, cannot be extinguished nor altered. From this, it becomes clear again how grave is the evil of attacking the Apostolic See, and of diminishing its legitimate freedom: by these things, not only is justice and religion violated, but public utility itself is abandoned, because, especially in the present state of affairs, the Roman Pontificate, if its freedom were preserved and its rights vindicated, could bring far greater benefits to the human race, exercising its full power without any impediment. Having related these matters to you, with God's help, let us proceed to complete the College of Bishops, as is customary. Then, His Holiness, with a preceding address, proposed the following Churches:

THE ECCLESIASTICAL SEE, PATRIARCHAL, OF ANTIOCH. Vacant, through the death of the Most Reverend Placid Ralli, the last Patriarch, who died at the Roman court, with the favor of the Most Reverend Vincent Tizzani, Archbishop of Nisibis.

THE METROPOLITAN CHURCH OF HISPALIS. Vacant, through the death of the Most Reverend Benvenuti Monzón Martin and Puente, the last Archbishop, who died outside the Roman court; to which His Holiness has transferred the Most Reverend Zephyrinus, Cardinal Priest of the Holy Roman Church, Gonzalez and Diaz Tunon, of the Order of Preachers, Archbishop of Toledo, for the presentation of the recently deceased Most Serene King of the Catholics.

THE ECCLESIASTICAL SEE, ARCHBISHOPRIC, OF MEPHESIN. Va-

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cant, through the death of the Most Reverend Francis, of the Counts of Eolicaldi, the last Archbishop, who died at the Roman court, with the favor of the Most Reverend Tobias Kerby, Bishop of Defensis.

THE METROPOLITAN CHURCH OF URBINATEN. Vacant, through the resignation of the Most Reverend Anthony Pettinari, of the Order of the Observant Minor Friars.

[*Latin ed. p. 312*]

312 FROM THE CONSISTORY ACTS, which were carried out and approved by the SUPREME HOLINESS, but with the effect of the appointment suspended until the possession by his Successor; with the favor of His Excellency Charles Mary Borgognoni, Priest of Bologna; who, having been born of legitimate, Catholic, and honorable parents in Bologna, and having surpassed the forty-ninth year of his age, was added to the students of the Pontifical Seminary of St. Pius, and there received the doctorate in theology, and in both canonical laws. The elected Canon Preposit was a Canon, previously a theologian, who has now renounced that position. He has performed the duties of a pro-synodal examiner, a defender of the sacrament of marriage, a fiscal promoter in causes of beatification and canonization, an auditor in the archiepiscopal court, and as Pro-Vicar General for ecclesiastical and civil affairs, and is numbered among the most intimate chamberlains of the SUPREME HOLINESS. The Metropolitan Church of Guatemala in Central America is vacant, due to the death of the Most Reverend Bernard Pinol and Ayckiena, the last Archbishop of that see, who died outside the Roman Curia, with the favor of the Reverend Picardi Casanova, a priest of Guatemala. He was born in Guatemala and has surpassed the forty-first year of his age, and has performed the duties of a fiscal in the ecclesiastical court. He has renounced the position of sacristan major, and has hitherto held the administration and governance of that archdiocese as an apostolic administrator. The titular church of St. Mary, under the Archbishopric of Caesarea, is vacant, due to the succession to the Cathedral See of Fossombrone, of the Reverend Father Alexius Biffoli, with the favor of the Reverend Father Basil Leto, the retiring Bishop of the Cathedral Church of Biella. The Cathedral Church of Tarnow is vacant, due to the death of the Most Reverend Joseph Aloysius Pukalski, the last Bishop of that see, who died outside the Roman Curia, with the favor of the Reverend Father Ignatius Lobos, the titular Bishop of Leucas, presented by the Most Sacred Majesty of Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, in his apostolic capacity. The Cathedral Church of Alphan is vacant, due to the death of the Most Reverend Jerome Volpe, the last Bishop of that see, who died outside the Roman Curia, with the favor of the Reverend Father Anthony Scotti, the pastor of the Church of Sarepta. The Episcopal Church of Messenien, under the Archbishopric of Corinth,

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is vacant, due to the death of the Most Reverend John Miege, the last Bishop of that see, who died outside the Roman Curia, with the favor of the Reverend Aloysius Bonetti, a priest.

[*Latin ed. p. 313*]

FROM THE CONSISTORY ACTS, 313 of the diocese of Forosempronio. He was also appointed as a Coadjutor with succession to the Most Reverend Father Eleonore Aronne, Bishop of Monte Alto. THE ECCLESIASTICAL TITLE OF THERMIEN, under the Caesarina Archbishopric, is vacant, due to the death of the Very Reverend Caietano Ratta, the last Bishop, who died outside the Roman curia, by the favor of the Very Reverend Aloysius Canestrari, a priest of the diocese of Monte Alto. He was also appointed as a Suffragan for pontifical and other pastoral duties to be performed in the Suburbicarian Churches of Ostia and Velletri, and their respective dioceses. THE ECCLESIASTICAL TITLE OF SEBASTEN, under the Tarsian Archbishopric, is vacant, due to a translation to the See of Brixen. The Very Reverend Father Simonis Aichner, by the favor of the Very Reverend Nicholas Zoccoli, a priest of the archdiocese of Bologna. He was also appointed as an Auxiliary to the Most Reverend and Right Reverend Lord, with the title of Saint Bernard at the Baths, to the Very Reverend Cardinal Battaglini, Archbishop of Bologna. Nicholas Zoccoli, having surpassed his fiftieth-seventh year of age, having recently received the doctoral degree in sacred theology, Metropolitan Canon, and until now, Pro-Vicar General for spiritual matters of that Most Reverend Archbishop, has renounced. THE CATHEDRAL CHURCH OF BUGELLE, is vacant, due to the voluntary and willing resignation of the Very Reverend Father Basilio Leto, which was carried out and admitted by the SANCTITY ITSELF, by the favor of the Very Reverend Father Dominic Cumino, a priest of the Turin archdiocese. The assembly of Matrons from the "Misericordia," and the Sodalitium of Catholic workers, the Synodal Examiner, the Parish Priest of Saint Mary of Mount Carmel, and until now, the Pro-Vicar General for spiritual matters of Turin, has renounced. THE CATHEDRAL CHURCH OF PORTALEGREN, is vacant, due to the death of the Very Reverend Father Joseph Maria da Silva Eerrao de Carvalho Martens, the last Bishop, who died outside the Roman curia, by the favor of the Most Reverend Father Emmanuel Bernard de Souza Ennes, Bishop of Brigantia, for presentation to the Most Serene King of Portugal and the Algarves, his most loyal subject. THE CATHEDRAL CHURCH OF BRIGANTIA, is vacant, due to the translation to the See of Portalegren of the Very Reverend Father Emmanuel Bernard de Souza Ennes, by the favor of the Very Reverend Father Joseph Alves de Mariz, a priest of Coimbra, for presentation to the Most Serene King of Portugal and the Algarves, his most loyal subject. Delivering theological lectures in the

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Aveiro seminary, at the Coimbra seminary, in dogmatic theology.

[*Latin ed. p. 314*]

314 FROM THE CONSISTORY ACTS: The professor, who had previously resigned, was appointed among the Examining Prelates for the Synod. After these matters, His Holiness made the following provisions, previously carried out through Apostolic Letters bearing the Fisherman's seal: He conferred the Archiepiscopal Church title of Cyzicus upon the Reverend Father John Lamy, formerly of the Society of Jesus in America. He appointed the Auxiliary, the Reverend Father Anthony Sebastian Valente, Archbishop, Primate of Goa, as the Reverend Father Henry Joseph Reed da Silva, titular Bishop of Philadelphia, having relinquished the Prefecture of Mozambique. He appointed the Reverend Father George Vincent King, of the Dominican Order, to the titular episcopal see of Juliopolitan, to serve as coadjutor with right of succession to the Reverend Father Joachim Hyacinth Lewis Gonin, Archbishop of Port of Spain. He bestowed the Metropolitan Church title of Metropolitan upon the Reverend Father Casimir Vie, of the Congregation for the Missions, elected as Apostolic Vicar of Kiang-si in China, recently established by His Holiness. To the Apostolic Vicariate of Chan-tong Meridionalis in China, established by the Most Holy Father, he promoted the Reverend Father John Baptist Anzer, of the Institute of Missions of Steyl, with the titular episcopal see of Teleptensis. Finally, the Reverend Fathers, Advocates of the Consistory, urgently, more urgently, and most urgently requested the pallium, taken from the body of the Blessed Peter, for the Metropolitan Sees of Hispalensis, Urbinatensis, Guatimalensis, and also Neo-Eboracensis for the Reverend Father Augustine Corrigan, and for the Sees of St. Andrew and Edinburgh, for the Reverend Father William Smith.

[*Latin ed. p. 315*]

315 FROM THE HOLY CONGREGATION OF THE COUNCIL OF SÉEZ, CONCERNING THE DIVISION OF PARISHES AND THE ERECTION OF NEW ONES, August 22, 1885. Session 21, chapter 4, concerning Reforms. SUMMARY OF THE MATTER. The Bishop of Séez requested, on August 4, 1884, that he might obtain, as he deemed necessary, an apostolic indult, "by virtue of which he might validly and lawfully erect new parishes within his diocese, and in particular within the town of Argentan, and reform deficient boundaries." Furthermore, the town of Argentan comprises approximately five thousand inhabitants. Of these, 500 reside in a district of the town which was recently annexed, formerly a suburb, and known as the "quartier du croissant," or the "quartier de saint Jacques," or the "quartier de la gare," since there is a railway station located there, which is said to be of great importance. This part of the town is under the spiritual jurisdiction of the parish of Coulandon, whose church is located approximately 2,500

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meters from the town. This parish of Coulandon, in addition to the five hundred inhabitants of the town, numbers six hundred others in the surrounding countryside. The remaining part of the town of Argentan constitutes a single parish, which therefore encompasses approximately 4,500 people. And there are two churches there, one dedicated to Saint Germanus, and the other to Saint Martin, both of which, it is asserted, are noteworthy and are not very far apart. Whatever may be said concerning the former state of these two ancient churches, it is certain that, after the French Revolution, the church of Saint Germanus obtained absolute primacy. However, the district of the church of Saint Martin, commonly called the "quartier Saint Martin," has always felt resentment towards the decline of its church, and has frequently insisted that its church be restored to its former state of honor, indeed, in...

[*Latin ed. p. 316*]

316. A true and independent parish would be established. Regarding this matter, the inhabitants themselves, having collected subscriptions from 117 citizens, which they first offered to the Bishop and the Diocesan Council, and then, in order to submit them to the legislative assembly of the Galliae Republic, insisted again on the establishment of the parish of Saint Martin. At the same time, several inhabitants of the region of Du Croissant, united with the parish of Coulandon, as I said, requested to be separated from their parish and joined to the urban parish. This is also the desire of the people of Antiquum; and in the year 1869, when the matter of establishing the church of Saint Martin as a parish was being considered, everything was arranged so that this region of Du Croissant would be added to the urban parish, and specifically to the church of Saint Germanus, to which it is closer, and assigned to it. However, both pastors opposed this proposed division; the pastor of Coulandon, indeed, believes that something must be done for the section of Du Croissant; but he does not believe that it can be provided for by the proposed union with the church of Saint Germanus, but rather by the erection of a new church or parish on the road commonly called Seez. But the pastor of Saint Germanus vehemently opposes it; he considers the division to be harmful, and therefore he considered any proposal offered to him by the Ordinary to be unacceptable; and the council completely agrees with and adheres to this opinion. A Synopsis of the Arguments. The arguments put forth by the pastors against this division can be briefly summarized as follows: The distance is lacking; since the church of Saint Martin is approximately 300 meters from the church of Saint Germanus; the population is lacking in numbers; for the entire town does not reach 5000 people, including those who are subject to the rural church. It should also be noted that the pastor and the council point out that the population of Argenthom has been decreasing in recent years; so that while it once exceeded 5000 people, it is now far from that number.

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THOSE WHO OPPOSE THE DIVISION.

[*Latin ed. p. 317*]

SECTION 317. If, concerning the section of *du Croissant*, a distance is judged to be present which would give the impression of a division, nevertheless, this would not, in the least, impede nor require the erection of Saint Martin's parish; since, by uniting this section to the urban parish, the needs of the people would be adequately met in the same way. Furthermore, there are inconveniences to this division: since the section of *du Croissant* is not contained in one place, but extends through a wide region; and thus, if its extreme point on one side is 2500 meters from the church of Coulandon; its extreme point on the other side would not be more than 1500 meters from the same church; while the same houses would remain 1050 meters from the church of Saint German. Therefore, at least for this part of the section of *du Croissant*, the union with the urban parish would be of little benefit. Moreover, division is odious; as the Abbot states in *ad audientiam*, Reiffenstuel *De eccles.*, edition 52, Amostazus *De caicsis piis*, book 4, chapter 3; and therefore, "it requires a just cause of necessity or utility, externally justified in the acts, so that the assertion of the Bishop himself, making the division on extrajudicial information, is not sufficient" (De Luca *De benef.*, page 1, discussion 45). And no one is ignorant of what the Doctors teach in Barbosa, *Inst. eccles.*, book 1, chapter 2, number 8, that for a division, "any distance is not sufficient, but only that which presents a difficulty for the parishioners in reaching the church with great inconvenience in receiving the sacraments and hearing the divine services." Furthermore, it must also be considered that in both regions of Saint Martin and *du Croissant*, the care of souls and the spiritual needs of the people are adequately provided for by priests, vicars, since the parish priest is not sufficient. Indeed, at Saint Martin, a vicar resides permanently, and administers the more necessary sacraments of confession and communion, and celebrates Mass daily. In the section of *du Croissant*, there is a chapel of the nuns of the Order of Saint Benedict, where the Blessed Sacrament is reserved, Mass is celebrated daily, and where the rules are...

[*Latin ed. p. 318*]

318 SAGIÉN. – Every week, and also during the vigils of all solemn days, the parish priest of the locality of Coulandon personally attends, both to hear confessions and to address the needs of his parishioners. It is recorded that a division [of the parish] was denied in Luvten, Sarjzanen, before the Sacred Congregation of Councils on September 27, 1732, as well as in Andrien, December 18, 1773, Berthonen, June 11, 1776, and in other cases. It must also be considered that the parish priest affirms that he obtained the parish from the predecessor of the modern Bishop, with an explicit promise that the parish of Saint German would not be divided during his

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lifetime. But what is of utmost importance is that funds are needed for the erection of the new parish, and in the meantime, the old parish would suffer a serious loss. For the present parish priest is unable to meet the needs of his parish unless he supplements them with his own funds. Given these circumstances, should a division occur, and thus the income of the church and the parish priest be reduced, the condition of the old parish, and indeed of the new one, would become entirely and intolerably difficult. For the new parish would initially have to assume a portion of the debt of 11,000 livres, and therefore the church of Saint Martin would have to begin its construction by borrowing money. It would also have to provide for all the needs of the parish, which it does not currently possess. The church itself, although celebrated and monumental, is currently in a state of disrepair; the same can be said of the bell tower. The parish house has indeed been purchased; however, as the builders themselves assert, 6,000 livres still remain to be paid for it. Furthermore, a salary must also be established for the parish priest; it is hoped that this will be obtained from the government. However, the situation is uncertain. Even if this is obtained, and the salary for the removable parish priest does not exceed nine hundred livres, the parish priest of Saint Martin, with uncertain income from the altar and masses, would barely reach 1600 livres annually, which is certainly insufficient for a decent living in the town of Argentan. This is the initial economic situation of the new parish and its priest.

[*Latin ed. p. 319*]

SECTION 319. This condition is, of itself, sufficiently distressing; it becomes even more burdensome when considered by the people of this new parish. The region of St. Martin, always adjacent to the factory, is abundant with poor families, lacking in the wealthy, and therefore, a large portion of the alms collected, commonly from charitable donations, are distributed in this region.

WHAT FAVORS DIVISION. On the other hand, it must be considered that the annexation of the section of "Le Croissant" to the urban parish, whatever that may be, appears necessary from several points of view. There exists a distance, whether measured from one end of the region or the other, which is always considerable, namely, 2500 meters, or even less, 1500 meters. There is also the difficulty of access to the church of Coulandon; not because of the roughness of the road, but because it is not customary, and it weighs heavily on the citizens to regularly attend a rural and remote church, while they seek out the urban church for sacred functions. Furthermore, the church of Coulandon is very simple and very small, so that it can scarcely hold two or three hundred people. And, moreover, because the pastor of Coulandon does not absolutely object to the division, indeed, he considers it necessary in some way; and he only disagrees about the method, because he certainly would prefer that this section be provided for, rather than

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according to the Bishop's proposal. Therefore, to call for the pastor's weekly visit to this region, or to the chapel of the nuns of St. Benedict, where, as many assert, one hundred people cannot be accommodated, and where Mass is rarely celebrated more than daily, seems almost ridiculous. Rather, the desire of the people must be considered, as well as the Bishop's words with which he addresses the Most Holy [Father]: "Furthermore, Your Excellency should be pleased to note that at least 500 faithful belonging to the rural parish, commonly Coulandon, from which this church is 2500 paces distant, live within the walls of the city of Argentomensis. From this arise many serious inconveniences, very harmful to the sanctification of souls. For, being too hindered by the distance, the faithful do not attend the church of Coulandon on Sundays, nor do they seek the sacraments from the pastor; indeed, even the boys and girls, [do not attend] school and catechetical instruction."

[*Latin ed. p. 320*]

320. For the sake of convenience, they wander about promiscuously, going and coming without any guardian, and not without great danger to modesty, and to the detriment of good morals. Furthermore, the parish priest of Argenteam ensis, formerly known as St. Germani, is not obligated by his office to care for the souls who are not from his own parish, so that five hundred faithful remain as if without a shepherd. And he adds: "Nor should one think of building a new church in that section... since not far away stands not only the prominent church of St. Martin, but also the very section of St. James... which can easily and without inconvenience be joined to the church of Coulandon, and to the parish church of St. Germani, as compensation for the division, in order to form the parish of St. Martin." Regarding the recent annexation of the region of du Croissant to the urban district, concerning the erection of a new parish near St. Martin in the same district, it should be noted that, for the erection of this parish, there is certainly no valid reason, especially considering the exception made, either by the number of people or by the distance of the places. However, especially with the addition of the section of du Croissant to the town, it would include almost 5000 people; which is certainly a considerable number; and it would be better cared for by two pastors than by one; and during the sacred ceremonies, it would be more convenient to be divided and to be in two churches than in one, especially considering the custom in Galliae of gathering together for sacred functions. Furthermore, the church of St. Martin was formerly a parish church, in one way or another: therefore, in the present situation, it would not be elevated to a rank that is not its own, but rather restored to its former state; which is usually not displeasing, and seems favorable in this matter. Moreover, there is a humble and urgent petition from the people, and this is not a petition of this day or of another day, but one that has been growing for a long time; to which, if there is

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any reasonable basis, the Sacred Congregation does not usually refuse; especially if it is strongly recommended by the Bishop. For the judgment and prudence of the Bishop are to be highly valued, as Rebuffus states in *Praxis Benefic.*, cap. 1, Decret., in cur. 1.

[*Latin ed. p. 321*]

SÉEZ. The commendation by the Bishop, or rather, it should be given greater weight, when it has been made after hearing several priests who have already served as vicars in one or the other parish. These priests, having related their opinions in writing to the records, both recommend the erection of the new parish and judge it necessary and feasible; and to this judgment of these priests, certainly considerable, is added the opinion of the entire Chapter of Séez, as well as that of other general vicars and episcopal advisors. Given these circumstances, it seems useless to magnify the constitution of the vicariate in the church of St. Martin, as if this would sufficiently provide for the needs of the people. For, as stated above, it appears that the people's desire and convenience, and the greater splendor of worship and the sacraments, are not well served by this. Moreover, it is not uncommon for a division to be granted solely for the greater convenience of the people, as in Lünen, Sarzana, July 16, 1712; Sapien, April 10, 1717; Comen, December 5, 1765; Fermo, December 15, 1759; Vivar, December 13, 1765; Ventimiglia, August 8, 1818; Imola, June 7, 1820; Fiesole, June 4, 1836; Melevis, February 4, 1843. For, as wisely observed by Cardinal De Luca in the Annotations to the Council of Trent, book 16, number 2: "It is clear that those are mistaken who, when considering whether a new parish should be established or not, rely solely on certain resolutions of the Holy Congregation... or on the traditions of certain Doctors, when it is rather a question to be decided based on the bare facts, according to the particular quality and individual circumstances of each case." Indeed, as is asserted in Neten, April 26 and December 20, 1879, there are examples in which the Holy Congregation has permitted a division, although, speaking absolutely, the spiritual welfare of souls could have been better served by a chaplain. Therefore, it remains to be seen whether the means are available to establish a new parish without prejudice to the old one. Indeed, it appears to be evident to many that the proposed division will not harm the parish of St. German, and its church. And first, the Acts, Volume XVIII, page 61.

[*Latin ed. p. 322*]

322. CONSIDERATIONS. Because, if, by taking a portion from Saint Martin's, the income for the parish priest of Saint German is diminished, and the offerings or rents from seats are somewhat reduced for the fabric [of the church]; a compensation almost equivalent would occur through the addition of the region of "Le Croissant." However, if any real dam-

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age should occur to the old parish, and the current rector of the church is deemed to be unable to bear it, the Bishop is present, who, in a solemn manner, declares to the Sacred Congregation [of Rites] in his letters: "I promise and guarantee to the rector of Saint German in Strasbourg a compensation equal to the damage he will suffer from the dismemberment of his parish." But this agreement was rejected by the parish priest, stating that in any case, this dismemberment would always be harmful. Furthermore, according to many, the church of Saint German will, in fact, gain, rather than lose, if, while the region of Saint Martin's is taken from it, the region of "Le Croissant" is added to it. The difficulty, rather, arises concerning the expenses, for the new parish: the fabric and the parish priest of Saint German completely lacked resources. However, as the opponents themselves admit, while the government pension amounts to 900 livres, the new parish priest could receive a suitable amount of 1600 livres; and, whatever may be said to the contrary, according to the Bishop, this would certainly be a sufficient, if not a generous, sum. But it may be objected that the government will not grant a suitable amount: the Bishop affirms that the erection of the parish of Saint Martin in Strasbourg will not proceed until the government has given its consent to this erection, with the stipulation of an ordinary endowment. Furthermore, it seems that the fabric of Saint Martin's will be able to sustain the expenses of worship: for the people of the church of Saint Martin's are not so poor, as the opposing side claims, and have been so generous in all respects that, in a short time, various items for the church have been acquired through their offerings. And indeed, this seems to be true, because all the individuals, about whom we have spoken above, are worthy of praise for this liberality.

[*Latin ed. p. 323*]

SÉEZ. The citizens of the region of Saint Martin are in agreement, and they state that they will contribute to the restoration of the church if a parish is established there; indeed, they anticipate that, according to the pastor's plan, this church, which is a truly remarkable monument but is currently in a state of decay, will be restored to its former splendor, through the diligent care of its own pastor, through the more generous alms of the faithful, and even through the intervention of the government; it is hoped that this church will soon be included among the monuments of the state. On the other hand, only a very small portion of the church of Saint German will be paid from the debt of 11,000 livres that burdens that building. Furthermore, it is certain that the parish house has been purchased and is free from any burden or foreign debt. Considering these and other factors, the purpose was to determine whether and in what manner the Bishop of Séez should be granted the authority to allocate funds for the parishes of Argentan, and for the establishment of a new parish dedicated to Saint Martin.

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RESOLUTION. The Sacred Congregation, having considered the matter on August 22, 1885, decided to respond: "Affirmatively, in both cases."

FROM WHICH WE GATHER:

I. That some Doctors consider the division and the erection of a new church to be a matter of fact; and therefore, it should be resolved based on the particular nature and individual circumstances of each case.

II. That the erection of a new parish is a better means of promoting the good of souls, which is the supreme law and end in these matters, than the appointment of chaplains or vicars; because the pastor, as the spouse of his church and the shepherd of his flock, cares for the salvation of the parishioners with greater zeal and charity.

III. That for the erection of a new parish, it is not strictly and absolutely necessary to have a title derived from the population or the distance of the places; but sometimes it is sufficient that it has been demonstrated that a new parish will better serve the desires and convenience of the people, as well as the decorum of worship and the sacraments.

[*Latin ed. p. 324*]

324. CONCERNING PARISHES. IV. It may seem that, in this matter, a great inconvenience arose from the divisions and lengthy distances; but through such an arrangement of boundaries, and the erection of parishes, it was better suited both to the needs of the people, and to the more appropriate governance, judgment, and prudence of the Ordinary; to whom much deference is due.

(1) REGARDING THE RIGHT OF PRESENTATION AND NOMINATION AT MONTISALTI. August 22, 1886. Session 25, chapter 9, concerning reforms. Dominic Matricola, in the year 1600, founded and endowed a benefice under the title of Saint Julian in the cathedral church of Montisalti; and he reserved to himself and his family the lay right of patronage. However, when the family of Dominic Matricola became extinct in the person of Patricius Vici in the year 1737, and when this man, from an instrument of the year 1734, had already donated all his goods to the confraternity of the Most Holy Sacrament of that city, from that time forward, the right of nomination to the benefice of Saint Julian passed to the aforementioned confraternity. Nevertheless, it is unknown whether the confraternity ever exercised this right. Meanwhile, in the year 1861, by civil law, all benefices of ecclesiastical patronage, among others, were suppressed. The possessor of this benefice until the year 1863 was the priest Ferri; who, upon his death, the property of the benefice was usurped. However, the confraternity, hoping to reclaim the goods of the usurped benefice, initiated a lawsuit for their redemption. In the meantime, the priest Vitus, in a supplicatory letter of the year 1871, explained to the Most Holy See that the benefice of Saint Julian

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had been vacant for a long time, and that therefore, its provision should devolve to the Holy See, and he requested that it be conferred upon him.

COMPENDIUM OF FACTS. (1) Recole, Vol. I, pages 520 and 543, Vol. III, page 396, Vol. XIII, pages 287, 60, 293, and 289: in which places there is an Appendix concerning the power of Ordinaries, and concerning the jurisprudence regarding the division of parishes.

[*Latin ed. p. 325*]

MONTISALTI 325 returned. The Bishop approved the petitions, and furthermore, asserted that the benefice belonged to the Holy See, even for this reason, because it was vacant in the Curia, since the last possessor, Constantine Ferri, had obtained the parish through apostolic Bulls. When asked about the nature of this benefice, the Bishop replied that it was, by right of patronage, held by laymen, and that it was exempt from the Bulls of both the Curia and the Holy See, which had been granted to various possessors of this benefice over time. After these things, an apostolic Bull was issued on July 29, 1871, at the urging of the priest Vitus; however, he was not able to take possession of the goods, since they were still occupied by the royal treasury. About ten years later, when the sodality won the case for the redemption of the goods against the state, and claimed all the goods in the year 1883, the priest Vitus urged the confraternity to order that the execution of the apostolic Bull be carried out in his favor. But the confraternity objected, stating that the apostolic Bulls were spurious and obtained fraudulently. A Synopsis of the Arguments: WHAT FAVORS PRIEST VITUS. It appears that the apostolic Bulls were not tainted by the vice of fraud or theft, primarily because the Bishop explained everything necessary to the matter with full knowledge. He indicated that the benefice of Saint Julian was held by right of lay patronage, that it was vacant, and that its nomination was reserved to the Holy See, both because its provision had been delayed for a long time, and because it was vacant in the Curia. Therefore, it does not appear that any vice intervened in the petitions; and consequently, there is no reason to allow an appeal. Indeed, as is well known, the Reverend Fathers do not allow such appeals unless it is clearly proven that there was fraud or theft; the Rota in Romana allowed no appeal on April 1, 1815, Session 8, before Piccolomini. Furthermore, it could be argued that the benefice of Saint Julian belongs by right of lay patronage to the confraternity of the Most Holy Sacrament; and therefore, it could not have fallen under the reservations of the apostolic Bulls, nor could it have been provided by the Holy See, since it should have been reserved to the pious sodality.

[*Latin ed. p. 326*]

326 MONTISALTI, to which more could be responded. Firstly, the confraternity, if, as the will of Patricio Vici in the year 1734 states, it acquired

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the right of patronage through inheritance, never, however, exercised such a right, as the Bishop states. Indeed, it is a certain and common doctrine that the right of patronage ceases and is entirely lost through non-use for a very long, or even a long, period of time, according to the requirement of prescription; as stated by Ferraris in *Iuspatr.* §. 2, n. 74; and Reiffenstuel, no. 125, in title 38, book III of the Decrees. But, even granting that the confraternity did not lose the right of patronage through its negligence, further doubt arises as to whether that right is lay or rather ecclesiastical. For, there is not a single opinion among the canonists, since there are Doctors of the Church who certainly hold that the right of patronage belonging to confraternities should be considered lay, as stated by Covarruvias, *quaest.*, practice 368, and Berardi in the title *De iurep.*, no. 38. But others, no less distinguished, such as Garcias, v. 8, page 453, Schmalzgrueber in the title *De iurep.*, nos. 7 and 8, and Ferraris in *De iurepatr.*, article 1, no. 16, hold that it is ecclesiastical. Indeed, the Sacred Roman Rota in its decision 444, no. 4, part 5, volume 4, definitively decided that the right of patronage is lay when the benefice was founded by a layperson and from secular goods, and was left to a confraternity of laypeople, who, as is notably added, are not indicated or distinguished by any sign of religion. And this opinion seems to be the truer one, as it reconciles two different opinions; and thus, according to Ferraris, no. 46, *I. c.*, and Cardinal De Luca in *De iurepatr.*, discussion 59, no. 48: "The right of patronage is considered ecclesiastical when it is granted to a confraternity erected by the authority of the Ordinary, when the church, bell tower, use of the sacristy, and other things truly make it appear ecclesiastical; otherwise, if the confraternity was erected for works of piety without these requirements." Furthermore, the matter at hand concerns a confraternity of the Most Holy Sacrament, which is of a religious nature, and is certainly adorned with signs of religion. Indeed, no one is ignorant that a lay right can become ecclesiastical immediately, by donation, or by prescription.

[*Latin ed. p. 327*]

MÓNTISA.LTI 327, or has passed to the Church; Reiffenstuel, *Decretorum*, Book 3, Title 38, paragraphs 49-51. Therefore, whatever may be the origin of the aforementioned benefice, provided that it has passed to the confraternity of the Most Holy Sacrament, it would seem to be of ecclesiastical nature. Thirdly, even if the aforementioned benefice were of lay patronage, it does not necessarily follow that it could not have been provided by the Holy See. For, although benefices of lay patronage are not subject to reservations and conditions, they can always be provided by the Holy See if the patron neglects to name someone. Furthermore, in a case such as this, it would seem to have occurred. However, if it is objected that the benefice of Saint Julian was, at that time, unjustly deprived of its dowry, and therefore could not have been provided, and that, moreover, time does

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not run against the ignorant or impeded, chapter 47 of *De Regulis Iuris*, paragraphs 6 and 5, together with Barbosa I, 3, 12, 170, Reiffenstuel, in Title 88 *De Iurepatronato*, paragraph 55; but if the true dowry is restored, the right of the confraternity should again become valid and endure; to all of this, it could still be responded. And, above all, before the Church, the titles of benefices are not extinct, even though their goods have been unjustly seized by the government, and therefore they can legitimately be conferred, even if this often does not happen or is not expedient. It should not be presumed that the confraternity, which has remained silent for half a century, and has never presented a candidate, and which has therefore probably lost its right, would, in this instance, suddenly take action and truly intend to present a candidate, unless it was prevented by the seizure of its goods; rather, it seems that even in this instance, the Bishop and the Holy See were free to name someone to the aforementioned benefice. Certainly, the pious confraternity deserves praise for the good work of redeeming the goods; indeed, it should also, as the restorer of the benefice's dowry, legitimately receive the benefice, to the extent that it is due to it; but this refers to the future, and to future provisions of the benefice; and canonical justice does not seem to allow that those who...

[*Latin ed. p. 328*]

328. MONTISALTI already possesses the right to the benefice; therefore, he should not be deprived of it by the patron, especially when another person is subsequently designated to the benefice. WHAT FAVORS THE BROTHERHOOD. The patron, addressing the first point of the dispute, recalls that, according to law, against apostolic letters obtained through fraud and deceit, the opening of the mouth [i.e., the right to be heard] must be granted, chapter *Super Uteris* of the Rescripts, especially if it is demonstrated that, through those letters, a right has been conferred upon someone; the Rota, in *Terracina*, or *Sezze*, granted the opening of the mouth on June 17, 1819, § 3, before Odescalchi. Indeed, the mind of the Pontiff always intends, by the concession of grace, not to inflict any prejudice, chapter *Cum ordinem* in 6 of the Rescripts. He further argues that, through the aforementioned bulls, an undeniable right to nominate the brotherhood had been conferred, and therefore those same bulls, being infected with the vice of deception and fraud, should be declared null and void. The Reverend Father Vitus explained to the Supreme Pontiff that the benefice was of lay patronage, but that, due to the passage of time, its collation had devolved to the Apostolic See. The Bishop, however, in confirming the same petition, stated that it was of lay patronage, and added that it was reserved to the Apostolic See, because the last rector had obtained the parish through apostolic bulls. Since these statements involved a contradiction, the question arose as to the nature of the benefice. The Bishop answered the question; after investigations, it appeared to him that

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the benefice was of lay patronage, but that, on that occasion, all collation pertained to the Apostolic See, because the brotherhood had failed to carry out the nomination at the appointed time, nor had it itself remedied that negligence. However, the advocate declared that this was contrary to the truth; and indeed, by an unjust and dictatorial decree issued in all the provinces of Piceno on January 3, 1861, by Valerio, all benefices of lay patronage, and all goods pertaining to them, were suppressed, and, as far as property was concerned, were immediately transferred to the demesne. At that time, the rector of the benefice was Constantinus Ferri, who retained the benefice until his death, which occurred in 1864, so that its existence could continue for as long as possible.

[*Latin ed. p. 329*]

Montesalto, number 329, is contested; however, immediately after his death, the assets of the benefice, which had been usurped from the demesne, were restored. Since it is well known that a liar cannot act, and time does not pass for him, it has been falsely asserted that the Sodalitas lost its right of presentation because it neglected the useful and crucial four-month period. Furthermore, the patron contends that fraud and deceit were involved in this matter. For when Father Vitus learned that the confraternity wished to redeem the endowment, for which a large sum had been paid, and also knew that he himself could not obtain the nomination from the Sodalitas, he therefore moved every stone in order to have the benefice conferred upon him by the Apostolic See, without consultation. Therefore, if a lying petitioner ought to be denied what he has completely obtained, and if deceit and fraud ought not to be supported by anyone, it must be conceded that not only is the judgment of the open mouth to be considered, but also that Apostolic Bulls, being manifestly infected with the vice of theft and deception, should not be enforced under any circumstances.

Turning to the other part of the question, the speaker argued that, from what has been said so far, it is clear that the right of nomination pertains to the Sodalitas. However, because the Bishop, although he declared before the commencement of the controversy that the right of patronage should be considered a lay right according to all the documents in the registry, now asserts that it has become ecclesiastical because the endowment was given to the Confraternity, he contends that, in order to remove all doubt, the right of patronage must be considered as a lay right, and therefore the right of nomination belongs to the Sodalitas. He demonstrates this by citing the teachings of the Canonists, the decisions of the Rota, and the long-standing tradition of Montesalto. And indeed, he says, the right of patronage, by its very nature, becomes ecclesiastical only when it is left to the church, a monastery, or ecclesiastical persons, specifically in the single chapter concerning the right of patronage, in 6. But in this case, the

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right was not given to the church or ecclesiastical persons, but solely to lay members of the Sodalitas, who are not improperly considered to be among the various groups of ecclesiastical persons. As is traditionally stated in Ursaia, volume 3, part 2, division 2...

[*Latin ed. p. 330*]

330 MONTISALTI, *scept.* 23, n. 55, inter praefatos coetus ”laicales confraternitates” nullam omnino figuram faciunt, sed ad hoc in ”ecclesia catholica institutae fuerunt, ut laici homines ”in vinculo fraternae dilectionis opera pietatis misericordiae ”et charitatis exerceant, ut in specie notat Monacelli *Formular*, tom. 1, tit. 6, n. 2. ” Exinde sponte consequitur, Canonistas communiter docere iuspatronatus hisce sodalitatibus competens laicale censendum fore. Sane Berardi *Comment. in ius eccles. univ.*, vol. 1, cap. 2, quaerens: ”Quid vero si laicorum confraternitati competat iuspatronatus?” respondit: ”Ex principiis, modo praeiactis, omnis facile diluitur difficultas. Neque enim dubitandum est, quin laicale dicendum sit, quoties ex bonis laicis erectum beneficium, aut ecclesia proponitur.” Idem tradit Oovarruvias, *Fr act. quaest. de Iurep.*, cap. 36, n. 8, aiens: ”Nam etsi confraternitas, causa pietatis instituta, adhaereat, et sit affixa alicui ecclesiae, ipsi tamen ex quibus collegium hoc et universitas constat, et ad quorum suffragia praesentatio fit, sunt laici, et ad hanc universitatem laicalem praesentatio pertinet, non ad ecclesiam, nec ad aliquam ecclesiasticam dignitatem; Rochus de *Iurepatr.*, q. 17, unde omnia quae conveniunt iuspatronatus laicorum, erunt plane applicanda huic iuspatronatus competenti fraternitatibus laicorum.” Eamdem prorsus sententiam tenent Gambarus de *Iurepatr.*, n. 412 et seq., Fuscus de *Visitatione*, lib. 8, cap. 14, n. 18, Zeeral in *praec. Episc.*, part. 1, §. *Iuspatr.*, et alii plures. Nec obiiciatur memoratis doctoribus id asserere tantum de confraternitatibus canonica erectione carentibus. Nam ipsi generaliter loquuntur, et nullam aliam suae sententiae rationem assignant, nisi quia confratres sunt laici, et collegium quod efformant ecclesiasticum censeri non potest, quae quidem ratio cuicumque speciei confraternitatis laicorum apprime convenit. (1) (1) De hac re optime disserit Lotherius de *Be benefic.*, lib. 2, q. 10, n. 4, qui explicite loquitur de confraternitatibus Episcopo subiectis iuxta Conc. Trid.

[*Latin ed. p. 331*]

Regarding others, the speaker noted that there are certainly not many who seem to hold the opposite view. He observed that some consider the right of patronage concerning the effect of reservations to be a lay matter, as stated by Garcias de Beneficiis, part 5, chapter 1, paragraph 608: ”However, with regard to the effect of requests and reservations, which we are discussing here, it seems that the right of patronage of lay confraternities should be considered a lay matter.” This is consistent with Vivian, in Praxis

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Jurispatronii, part 1, book, chapter 3, paragraph 15. (1) Session 21, chapters 8 and 9, concerning reforms, state, "it is said there, so that all may see: 'they are attached to churches, in which they have oratories, and are lay matters.'" The reason for this decision was that these confraternities were instituted by the authority of the Bishop. Regarding the right of patronage of these confraternities, it is said: "It is entirely denied to any lay confraternity, to which one has been transferred, to obtain that right by reason of the church; for it is more fitting that it belong to the church, from which it should be withdrawn." The three other reasons considered the best in Volterra were as follows: first, because it cannot always be said that the confraternity is pious or dependent on the church, or attached to it; rather, it is entirely separate from the church, and its rights are more in line with that. Second, because, as Felyn states in Praejudicia Patronorum Beneficiorum, moral, institutions, Rota et sententia tract, question 3, question 1, in Pistoria, and as Sarmiento states in Neocastrensis, decision 680, paragraph 23, Azov, chapter 28, and also in Sylva, decision 174, paragraph 11, the opinion of the Rota runs, even in the observance of the Apostolic Chancery, as Caneda states in part 2, diverse, section 5, in part 2, recent, section 2, recent, Damaso, volume 1, decision 144, which is most relevant to this case. Furthermore, it was observed that "the testator primarily intends to benefit the confraternity, in which he places the patronage of the confraternity of the Holy Savior to the Holy Saints." It was strongly debated whether this right of patronage was lay or ecclesiastical. However, it was decided that it was lay, as it had always been through the decisions of the Roman Rota. The second decision, limited to the person of Capellania Lancellotto, was made because it was ordered to respect that, even though there is also some respect for the church. To the objection that the confraternity is of the ecclesiastical forum, and therefore the custodians should be convened there, it was replied that the right of patronage is not ecclesiastical, "otherwise, it would not be possible to grant any lay right of patronage in ecclesiastical benefices, because any lay patron can be convened before an ecclesiastical judge for a lay patronage." Therefore, having these reasons before him...

[*Latin ed. p. 332*]

332 SIONTISALTI. Nullum detrimentum confraternitatis ad ius suum derivatum pertinet ex eo quod ignoretur si aliquotiam suum ius exercuerit, cum ipse episcopus ultro concedat in omnibus collationis bullis huiusmodi ius eidem attribuendum. At si quid dubium adhuc permanere videri posset, hoc ex longaeva observantia unius saeculi cum dimidio prorsus excludi sustinet. Cuius centenariae observantiae testem omni exceptione maiorem ipsummet Ordinarium invocat, qui in liberis superioribus relatis libenter admittit ius patronatus huiusmodi in omnibus collationis bullis laicale nuncupatum fuisse. Si enim vi huius observantiae sodalitas posset ius patronatus sibi vindicare, licet acquisitionis titulus deficeret, "Tridentini Concilii,

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sess. 25, cap. 9, de re for."; "Rota, part. 10, dec. 367, n. 8, et part. 19, tom. 8, dec. 519, n. 4, recent."; potiori iure exinde contendere valet illud laicale permansisse. Hinc, in absurda hypothesi qua confraternitatum ius patronatus ecclesiasticum censeri deberet, optimo iure praesumi posset in themate, quod vel ex donatoris voluntate, vel apostolico privilegio, ius patronatus laicale permanserit. Animadvertit tandem orator, ius nominandi confraternitati denegari non posse ob utilis temporis lapsum, cum inauditum hucusque sit quod, usurpatis omnibus beneficii bonis, patronus adhuc teneatur ad merum titulum, sine re obtinendum, tempore a iure praefixo aliquem praesentare. Vindicata vero cum ingentibus expensis ac laboribus beneficii dote, statim sodalitas suum ius exercere volebat. Quibus hinc inde perpensis propositum fuit dirimendum. Auditorium constanter statuit ius patronatus laicale confraternitati relictum ecclesiam, part. 4, tom. 2, num. 20, idem permanere, quia spectatur qualitas part. 19, recent, laicalis in confraternitate adsint personae ecclesiasticae, et quia illi ad quorum dec. 661 praesentatio non adimo etiamsi si voces, et sui iuspatronatus laicale permanet praesentatio fit, dummodo non sit contemplata persona omnes laici, et ad hanc universitatem ipsorum, part. 1, diver. decis. », 574.

[*Latin ed. p. 333*]

333 MONTISALTI. A Doubt Regarding Whether the Right of Opening and Naming [of a cause] Belongs to the Competence of a Brotherhood, in Particular Cases. RESOLUTION. The Sacred Congregation, having considered the matter on August 22, 1885, decided to respond: Affirmative, and furthermore. FROM WHICH THE FOLLOWING MAY BE GATHERED: I. The right of opening [a cause] is to be exercised whenever it is established that there has been deception or fraud; or whenever Apostolic Letters have been obtained through fraud and falsehood; especially if, through them, a right has been claimed for someone. II. It seems that the judgment, which has the right of patronage, belongs to lay sodalities, because the sodality consists of laypersons, for whose benefit the presentation [of the cause] is made. FROM THE APOSTOLIC PENITENTIARY. The Sacred Penitentiary, by order of the Most Holy Pope Leo XIII, issued the following declarations for the jubilee of this year, 1886. I. The fast prescribed for obtaining the jubilee cannot be fulfilled on days of strict observance, nor on the four days of the year, unless substantial foods are used, and the use of any indulgence or privilege regarding the quality of food is prohibited, even by the Bull Cruciatae. However, in those places where it is difficult to use substantial foods, the Ordinary can grant permission for eggs and dairy products to be used, provided that the other forms of ecclesiastical fast are observed. II. The Indult granted in the aforementioned Apostolic Letters to chapters, congregations, brotherhoods, and colleges, as well as to individuals visiting churches processionally with their parish priest or a priest delegated by him, for the purpose of gaining the jubilee, can be applied by the Ordinar-

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ies. III. One and the same Confession and Communion cannot satisfy the Paschal precept and simultaneously obtain the jubilee. IV. The jubilee, as regards the plenary indulgence, can be obtained twice or more by repeating the prescribed works twice or more; but once, [it is sufficient].

[*Latin ed. p. 334*]

334. The HOLY PENITENTIARY, that is to say, only for the first time with regard to other favors, namely, absolutions from censures and from reserved cases, commutations or dispensations. V. Chapels and oratories may also be designated for the purpose of fulfilling prescribed visitations, provided that they are dedicated to public worship and that the Holy Mass is customarily celebrated therein. "V. Visitations instituted for the purpose of gaining indulgences, provided that they are performed according to the prescribed number, may be granted at the discretion of the faithful, either on one day or on several days. VII. Those who fulfill or complete the prescribed conditions, either partially in one diocese and partially in another, for any reason, may gain indulgences, provided that they observe the ordinances of the local Ordinaries. VIII. Confessors cannot grant extraordinary faculties by apostolic letters to those who seek absolution and dispensation, but who are unwilling to fulfill the prescribed works and gain indulgences. (1) Instructions of the Holy Penitentiary for confessors who, during the time of this jubilee, make use of special faculties, by which they may be strengthened on this occasion. I. They may absolve penitents from the crime of heresy, after they have abjured their errors according to law, and after a salutary penance has been prescribed to them, along with frequent reception of the sacraments, and with the obligation to retract prudently before those before whom they pronounced heresies, and to repair the scandals. II. Those who have cooperated with, or adhered to, or in any way lent their services or support to the invasion and rebellion against the jurisdiction of the Holy See, or who have supported the union of Italy under a single king, and who have promoted unjust laws and have worked for their execution, may be absolved, provided that they first give signs of true repentance, and sincerely promise obedience to the Holy See and to its mandates. However, public officials whose office seems to import some cooperation with acts condemned by the Holy See, or who appear to be opposed to divine and ecclesiastical laws, shall not be absolved unless they are first dismissed from office; and to the extent that they cannot be dismissed, they shall be ordered to consult the local Ordinary, who shall decide and provide according to the norms known to him. III. Ecclesiastical persons also may be absolved who have given pamphlets, or who have subscribed to them, against the temporal dominion [of the Church].

[*Latin ed. p. 335*]

I. Those who have made false promises or perjured themselves, shall

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make restitution, if possible, and, failing that, shall perform penance, according to the judgment of the confessor.

II. Those who have blasphemed or otherwise offended against religion, shall make suitable amends, according to the judgment of the confessor.

III. Those who have contradicted the doctrines manifestly taught by the Church, shall first make a public retraction, which shall be sufficiently clear and well-known, according to the following formula: "I, N.N., confess and acknowledge that it was an error and a rash act to contradict the doctrines manifested by the Church, and that it cannot be done without grave sin; therefore, I reject such contradiction and offer sincere obedience to the authority of the Holy See, and I respect and conform to all the declarations of the same, especially those concerning the temporal dominion of the Supreme Pontiff, to which the Catholic episcopate has given its assent."

IV. Those who have violated the personal and local ecclesiastical immunities and the enclosure, shall make restitution of the damage caused, and shall repair the injury done to the Church in the best way possible.

V. Those who have acquired and retain ecclesiastical property that has been alienated from the administration, provided that they first deliver to the local Ordinary, or to other ecclesiastical officials designated by the Ordinary for their prudence within the diocese, a signed document, either subscribed by them or signed in the presence of witnesses, which shall be immediately transmitted to the said Ordinary and carefully kept in the diocesan archives or elsewhere, in which they declare that they and their heirs and successors are subject to the following obligations or conditions:

1. To retain the same property for the benefit of the Church, and to obey its commands.

2. To preserve the property, and to use it for a useful purpose.

3. To fulfill the pious obligations attached to the property, which are not fulfilled by others.

4. To contribute from the fruits of the property to pious institutions or places to which it rightfully belongs.

5. To warn their heirs and successors, through the aforementioned document, about these obligations, so that they too may know what they are bound to do.

VI. Those who have acquired ecclesiastical property and subsequently sold it to others, and those who have cooperated in contracts concerning such property, shall deposit the unjustly obtained profit in the hands of the Ordinary, for the purpose of preserving or investing it as soon as possible and in the safest way possible, for the benefit of the pious institutions that have suffered damage, and shall warn the new purchasers and other accomplices to consult their conscience, and shall be subject to the obligation of fulfilling the mandates of the Holy See.

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VII. Those who have acquired ecclesiastical movable property shall make a charitable contribution to the benefit of the pious institutions to which the said property belonged, to the extent that the price paid was, in the judgment of the confessor, less just. However, if the property is of a kind that is not consumed by use, the confessor may determine a different form of restitution.

[*Latin ed. p. 336*]

336 To those who have acquired, or who can acquire through diligent effort, ecclesiastical property, whether it be land or sacred vessels, the following obligation shall be imposed: they shall first appeal to the local Ordinary, so that he may provide for these matters according to the indulgences granted to him.

VIII. Those who have appropriated or alienated ecclesiastical goods from the rightful administration shall be obligated to first appeal to the local Ordinary, so that he may provide for the goods thus appropriated, according to the indulgences granted to them.

IX. Those who have acquired ecclesiastical property through leasehold (emphyteusis), provided that they first present to the Ordinary, or to other ecclesiastical officials designated by the Ordinary, a written agreement (syngrapha) in which they declare that they and their heirs and successors are subject to the following obligations or conditions:

1. To preserve the same property and to use it for a useful purpose.

2. Not to avail themselves of any privilege or law, whether enacted or to be enacted, concerning the redemption of tithes.

3. To retain the property at the will of the Church and to obey its commands regarding the restitution of these goods.

4. To fulfill the pious obligations attached to these goods that cannot be fulfilled otherwise.

5. To increase the tithe for the sake of justice, and, according to the estimation of experts, if the amount stipulated in the contract is deemed too small, to pay this increase to the Ordinary, for the benefit of the pious cause to which the tithe rightfully belongs, as stated in section VI.

6. To inform their heirs and successors of these obligations through the aforementioned written agreement, so that they too may be aware of their obligations.

X. Those who have not only acquired property through leasehold (emphyteusis), but have also redeemed such property, provided that they comply with the prescriptions in section V.

XI. Those who have redeemed ecclesiastical dues and rights that are inherently redeemable, provided that they first present to the Ordinary any amount that remains unpaid of the principal sum, in order to achieve the preservation as described in section VI.

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XII. Those who have redeemed tithes, dues, services, and other ecclesiastical rights that are not inherently redeemable, provided that they first present, as prescribed in section V, a written agreement (syngrapha) in which they declare that they and their successors are subject to the following obligations or conditions:

1. To retain the lands thus improperly redeemed at the will of the Church, and to obey its commands.

[*Latin ed. p. 337*]

337 S, POENITENTIARIA 2. To preserve these same endowments, and to carry out a useful purpose within them. 3. To safeguard the indemnities, at any time, of pious institutions concerning the full perception of the canon, tithes, and offerings, and concerning all other rights which pertain to these pious institutions; and also to fulfill, as is due, the pious obligations attached to these endowments, which are not fulfilled by others. 4. To warn the heirs and successors through the aforementioned agreement about such obligations, so that they too may know to what they are bound. To each [person] is prescribed salutary penance, after the scandal has first been repaired, or at least, provided that they are prepared to repair it as soon as possible in the best way they can, according to the prudent judgment of the confessor, and with a firm obligation for each ecclesiastical court to transmit copies of such obligations to other Ordinaries, to the contrary notwithstanding. Given in Rome, in the Sacred Penitentiary, on the 15th of January, 1886. RAPHAEL CARD. MAIOR MONACO LA VALLETTA, PENITENTIARY. Hyppolitus Can. Palombi, Secretary.

CONCERNING THE HEROIC ACT OF CHARITY TOWARDS SOULS IN PURGATORY.

The heroic act of charity towards souls detained in Purgatory consists in this: that a Christian, either through a specific formula, or even only in his mind, offers to God, O.M., for the souls in Purgatory, all the works of satisfaction which he, while alive, will perform; and also all the suffrages which, after death, may in some way be offered to him. Many devout Christians, devoted to the Blessed Virgin Mary, following the example or encouragement of the Blessed Father Gaspare Oliden of the Order of the Regular Clerks of the Theatins, have been accustomed to deposit such works of satisfaction and suffrages in the hands of the Blessed Virgin, to be distributed by Her, according to Her merciful good pleasure, for the benefit of the souls in Purgatory. This heroic act of charity has not been approved once by the Apostolic See; indeed, in order that it may be more useful to the deceased, the Act has been enriched with Indulgences, *Acta, Vol. XVIII, p.

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COXI, 22*.

[*Latin ed. p. 338*]

338 From the Sacred Congregation for Indulgences, concerning the increase and privileges thereof, those who issued it. These matters were confirmed, increased, and extended to all the faithful by Pope Pius IX through a Decree of the Sacred Congregation for Indulgences, dated November 20, 1854. Indeed, doubts have arisen repeatedly concerning the object of this offering, the essential conditions of the same act, and the Indulgences and privileges attached to it. It has been questioned whether the Indulgences which a Christian can obtain during his lifetime should be included among the works of satisfaction; and whether those who perform a heroic act of charity satisfy the requirements, even if they reserve and apply to themselves the Indulgences granted for the living. Furthermore, a dispute has arisen concerning the pious practice of offering acts of satisfaction and suffrage to the hands of the Blessed Virgin Mary, with some maintaining the necessity of this offering to the hands of the Blessed Virgin for the attainment of Indulgences and the enjoyment of privileges, while others object. Finally, certain doubts remain regarding the manner in which Plenary Indulgences can or should be applied by those who have performed a heroic act of charity to the souls in Purgatory. Wherefore, in order that those things which seemed obscure in this matter might become clear, and that those things which were uncertain might become certain, the following questions were proposed to the Cardinals of the Sacred Congregation for Indulgences to be resolved:

I. Whether, among the works of satisfaction offered in a heroic act of charity for the souls in Purgatory, the Indulgences declared by the Supreme Pontiffs to be applicable to deceased Christians are also included?

II. Whether the offering is satisfied by those who wish to reserve the Indulgences granted for the living; or are these Indulgences to be applied to satisfy the pious intention for the deceased, according to the Indult granted by the Supreme Pontiff to those who issue the heroic act of charity?

III. Whether 1° the heroic acts of charity are an integral part, or a prescribed condition for the participation in privileges, such that all proper satisfactions and Indulgences should not only be offered for the souls in Purgatory, but also be left to be distributed to the Blessed Virgin, as it may please her; or 2° whether this offering to the hands of the Virgin should be considered merely an accessory act of devotion recommended to Christians?

IV. Whether the Plenary Indulgences which Christians obtain by issuing a heroic act of charity are, in addition to the Holy Communion...

[*Latin ed. p. 339*]

From Section 339 of the Sacred Congregation for Indulgences, it must

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be determined whether these [indulgences] can be applied to the souls which the Most Blessed Virgin Mary desires to be freed from Purgatory, or whether they can be applied to any soul in Purgatory.

Q. Whether the Plenary Indulgence of the privileged altar can be applied by a priest who has performed an heroic act of charity to the soul for whom he celebrates Mass? Or, 2° can it be applied at his discretion to any deceased person? Or, 3° must it be applied to the souls which the Most Blessed Virgin Mary desires to be freed from Purgatory?

To these questions, after hearing the opinions of many Consultors, the following was decided in the General Congregation held in the Vatican on December 18, 1885:

To I. Affirmative.

To II. Negative to the first part; Affirmative to the second.

To III. Negative to the first part; Affirmative to the second.

To IV. Provided for in the foregoing.

To V. To the first part, Affirmative; for in this way the privilege of the altar is granted by the Supreme Pontiff; to the second and third parts, provided for in the response to the first part.

These matters having been reported at an audience held by the undersigned Secretary on the 19th of the same month and year, Our Most Holy Lord Pope Leo XIII entirely approved the responses of the Cardinals.

Given in Rome, from the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, on December 19, 1885.

I. B. CARD. FRANZELIN, Prefect.

FRANCISCUS DELLA VOLPE, Secretary.

DECREE concerning the Third Secular Order of St. Francis of Assisi.

By the Apostolic Constitution, which begins "Misericors Dei Filius," dated III Kalends of June in the year of Our Lord one thousand eight hundred and eighty-three, Our Most Holy Lord Pope Leo XIII, with paternal benevolence, granted to the members of the Third Order, which is called the secular Order of St. Francis of Assisi, that they may receive, within the year, nine times Absolution, that is, Benediction with a Plenary Indulgence. But since the days on which this Absolution or Benediction is granted are not all feast days of precept, but some are local feasts, and some are feasts observed only in certain places, to which the members of the secular Third Order may not easily be able to attend, and to perform the other things required for the Absolution or Benediction, therefore...

[*Latin ed. p. 340*]

340 From the Sacred Congregation for Indulgences, regulations have been established, and therefore, it is necessary that many are entirely deprived of this spiritual benefit on those days. Wherefore, several Sacred

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Prelates and other ecclesiastical men, to whom the care of these Franciscan confraternities has been entrusted, made suppliant prayers to the Most Holy Lord, that He might deign to provide for this matter through Apostolic benevolence. Moreover, His Holiness, to whom it is most dear that the Third Secular Order of St. Francis of Assisi may receive ever greater growth, and that its members may have stronger incentives to piety, granted these prayers, and in an audience held on January 16, 1886, the aforementioned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, with clemency, granted that the aforementioned tertiaries, if, by a legitimate cause, they are hindered from attending the churches to receive Absolution or Benediction on the assigned days, may receive the same Absolution or Benediction on any feast day of precept that occurs within the octave of those same days, provided that they fulfill all that is prescribed in the Index of Indulgences by the Apostolic Constitution for rightly receiving Absolution or Benediction with a Plenary Indulgence. This [dispensation] is valid forever, without any brief being required, in contradiction to anything to the contrary. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on January 16, 1886. I. B. CARD. FRANZELIN, Prefect. FRANCISCUS DELLA VOLPE, Secretary.

VIENNA (in Austria), Concerning the Approval of the Indulgence for the Privileged Altar. In Vienna, in Austria, a canonically established Association of Perseverance of Priests exists. Its purpose is to promote devotion to the Most Sacred Heart of Jesus, both in oneself and in others, and to obtain the gift of perseverance and other graces; and the principal conditions, which are not obligatory under any sin, are: 1° To recite the Our Father and the Hail Mary daily, together with the little prayer: "Jesus, meek and humble of heart, make my heart like unto thy own"; 2° To perform the Sacrament of Confession at least twice, or at least once, each month; 3° To dedicate oneself to spiritual exercises at least once every three years; 4° To celebrate one Mass each year for the living members and one for the deceased members; if this cannot be done, to recite the Rosary for the living and the Office for the Dead for the deceased. Furthermore, upon the death of any member, prayers, good works, and Indulgences should be offered for the deceased on any day to the Most Sacred Heart of Jesus. To the priests of this confraternity, His Holiness Pope Pius IX, with Apostolic Letters in the form of a Brief dated May 14, 1869, granted, in addition to several Plenary Indulgences, that the Masses celebrated at any altar for the deceased members of the confraternity may [benefit] the souls.

[*Latin ed. p. 341*]

34. Or the souls for whom, or for which, the Masses have been celebrated, will obtain the same benefits as if they had been celebrated at a privileged altar. Furthermore, from these words of the apostolic letters of the present Association, it seems to be understood by the President and others, that

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not only the soul of one member, but also the souls of several deceased members of the Association, can, through this privilege, receive a plenary indulgence in a single Mass. Therefore, in order to have full certainty on this matter, the aforementioned President inquired of the Sacred Congregation for Indulgences and Sacred Relics. Whether the members of the aforementioned Association, in a single Mass, can apply a plenary indulgence: 1st, to the soul of only one deceased member; or 2nd, to the souls of several deceased members. In the plenary Congregation held on December 18, 1885, in the halls of the Vatican, the Cardinals answered: Affirmatively to the first part; Negatively to the second. On the following day, in an audience granted by the Most Holy Lord Pope Leo XIII to the undersigned Secretary, the judgment of the Cardinals was confirmed. Given in Rome, from the Secretariat of the same Sacred Congregation, on December 19, 1885. I. B. CAED. FRANZELIN, Prefect. EX S. C. INDULGENTIARUM. DELLA VOLPE, Secretary. BRUSSELS, or MECHLIN. Concerning the beatification and canonization of the Venerable Servant of God, Sister Anne of Jesus, a religious of the Order of Discalced Carmelites, and foundress of monasteries of said Order in Belgium. Whereas, on the sixth day before the Kalends of May in the year 1883, Our Most Holy Lord Pope Leo XIII, with paternal benevolence, had already granted that investigations regarding the fame of the sanctity of life, virtues, and miracles, in general, of the aforementioned Venerable Servant of God, Sister Anne of Jesus, could be carried out in the Ordinary Congregation of the Sacred Rites, without the intervention and vote of Consultors; and whereas, at the request of the Reverend Father, Father Constant of the Immaculate Conception of the Blessed Virgin, a priest of the Order of Discalced Carmelites, and General Postulator of the Causes of Beatification and Canonization of the Servants of God of the Order of Discalced Carmelites, and with the consent of His Eminence and Highness, Cardinal Miecislaus Ledochowski, Promoter of the Cause, the following question was proposed for discussion at the Ordinary Congregations of the Sacred Rites held on the aforementioned date in the Vatican: Whether it is established by apostolic authority that the Process constructed in the City and Archdiocese of Mechlin, regarding the fame of the sanctity of life, virtues, and miracles, in general, of the aforementioned Venerable Servant of God, is valid and relevant in this case, and for the purpose for which it is intended?

[*Latin ed. p. 342*]

342 DECREE: The Decree of the Most Holy Fathers entrusted with safeguarding the sacred rites, after due deliberation, having heard the voice and the written statement of the Most Reverend Father Augustine Caprara, Promoter of the Holy Faith, decided to respond: "Affirmative." On December 17, 1885. On that very day, the aforementioned facts were faithfully reported to the Most Holy Lord Pope Leo XIII by the undersigned Secretary.

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His Holiness approved and confirmed the Decree of the aforementioned Congregation.

D. CARDINAL BARTOLINIUS, S. R. C., Prefect.

L. S. LAURENTIUS SALVATI, S. R. C., Secretary.

— FROM THE HOLY CONGREGATION FOR THE INDEX: Decree, on the second day of January, 1886. The Holy Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, which is charged with the task of adding books to the Index of prohibited books, and with their condemnation, suppression, expurgation, and permission throughout the Christian Republic, has ordered and does order that the following work be added to the Index of prohibited books:

"Les Phénomènes Historiques et les Révélations de Sainte Thérèse," by G. Hahn, S.J., professor of Physiology at the College of the Society of Jesus in Louvain. Brussels, Alfred Vromant, Imprimeur-Editeur, 1883.

Decree of the S. R. C. on December 1, 1885. The author commendably submitted and disapproved of the work. These matters, having been reported to the Most Holy Lord Pope Leo XIII by the undersigned S.J. from the Secretariate, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc.

Given in Rome on January 11, 1886.

Fr. THOMAS MARIA, Bishop of Sabina.

Card. MARTINELLI, Prefect.

Fr. Hieronymus Pius Saccberi, Order of Preachers, S. Ind. Congregation, from the Secretariate.

[*Latin ed. p. 343*]

343 FROM THE SACRED CONGREGATION OF THE ROMAN INQUISITION. DOUBTS proposed by the Archbishop of Udine, the apostolic administrator of the Diocese of Mantua.

I. Can a Catholic priest, in places where heretics do not have their own ministers, accompany the corpse of a heretic from his house to the cemetery, even though the corpse is not carried into the Church, nor are the bells rung? And, if so, in what manner?

II. Is such a practice permitted or tolerated in some special places only, or can it extend even to our Italy? And, if so, in what manner?

III. What sacred vestments should the priest wear in this accompaniment, and should he precede the Cross?

IV. If two Protestant spouses, lacking a proper minister, present their child to a parish priest or another Catholic priest for baptism, declaring that they do not intend by this to obligate themselves to educate the child in the Catholic religion, can the parish priest baptize him, in order to ensure

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the eternal salvation of the innocent child, regardless of what may happen in the future, when he reaches the age of discretion?

[*Latin ed. p. 344*]

344 INSTRUCTION, Thursday, August 26, 1885. In the general Congregation held before the Eminent and Reverend Lords Cardinals against heretical perversity, the General Inquisitors, concerning the aforementioned doubts, the aforementioned Eminent Lords decided to respond as follows: To the first, negatively; to the second and third, as provided in the first; to the fourth, negatively, except in the case of mortal danger. January 19, 1886. It agrees with the original. So it is. For D. PELAMIS. R. and U. I. Notary, GUSTAVUS PERSIANI, Substitute. INSTRUCTION to the Patriarchs, Archbishops, and Bishops of the Eastern Rites, to be used in matrimonial cases, approved in the general Congregation of the Most Eminent and Reverend Fathers in matters of faith, the General Inquisitors, on Thursday, June 20, 1883. Since the bond of marriage, as a duty of nature for the upbringing of children, and for the attainment of other matters of the greatest importance, requires a perpetual and individual habit of life between spouses, and it is all the more necessary that it be an indissoluble Sacrament of the Church, according to the Lord's will: "What therefore God hath joined together, let not man put asunder"; thus, when, with some impediment, which are called diriment impediments, a true marriage has not been entered into, it is the legitimate authority of the Church, to which matrimonial causes are uniquely referred, that must proceed. — We consider it worthwhile to present this instruction to our readers, which the Most Holy Congregation of the Inquisition has printed for the preparation of procedural documents in matrimonial cases: it is indeed in accordance with the provisions and decrees of the Holy Canons and the Council of Trent, with the Encyclical Letters of the Supreme Pontiffs, with the celebrated Constitution of the blessed Pope Benedict XIV, which begins with "Dei miseratione," and with no less famous Instruction of the Holy Congregation, dated August 22, 1840, and with other instructions pertaining to the matter. And although it is intended for the Ordinaries of the Eastern Rites, we do not doubt that it will be useful to all other regional Ordinaries and ecclesiastical judges who must deal with matrimonial cases, since the precepts found therein, and the rules indicated, being carefully arranged according to the course of law, are suitable for ecclesiastical tribunals of any region, and are most conducive to the proper conduct of proceedings.

[*Latin ed. p. 345*]

INSTRUCTION 345 pertains to matters which, to be judged or declared invalid, demand the dignity of the Sacrament, the reason of justice, and the salvation of souls (1). Truly, how much effort and diligence are required

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to solidly prove the existence of any impediment in each case, daily experience testifies. For some impediments are themselves very difficult to prove, and it often happens that the facts from which proofs should be derived are so entangled and surrounded by circumstances that it is very difficult to explain them and to render a judgment concerning them. Therefore, with the solicitude with which the Holy See has always wished to safeguard the dignity of this Sacrament, the administration of justice, and the salvation of souls, it has never neglected to prescribe, through opportune decrees or Apostolic Constitutions or Instructions, rules by means of which, even in the most difficult cases, the truth may be safely discovered and a just judgment rendered. However, experience has shown that Patriarchs, Archbishops, and Bishops of various Eastern rites, due to the special conditions in which their dioceses are situated, are not always able to conform in all respects to the same Apostolic Constitutions and Instructions, and therefore are not always able to achieve that full legality of processes and judgments which is so greatly to be desired in defining such cases. Therefore, that, as far as possible, the prescriptions of the canons in this matter of such great importance may be religiously observed, and at the same time consideration may be given to the special conditions in which ecclesiastical tribunals among the Orientals are situated, the Supreme Pontiff ordered a special Instruction to be drawn up for these aforementioned tribunals, which must be carefully executed by all to whom it applies.

PART I. — FIRST TITLE: Concerning the accusation of marriage.

1. In order for any matrimonial cause to be undertaken in an ecclesiastical tribunal, it is necessary that a regular and legal accusation against the marriage precede; which will never be admitted, unless it originates from a person or persons who, by common law, are competent to bring the accusation. For in some impediments, the very (1) Arg. C. If the judge 13 de Sentent. of Benedict XIV, by the mercy of God, which will be included in Appendix IX of this Volume I, p. 346. See § I. Constit.

[*Latin ed. p. 346*]

346. INSTRUCTION: Only spouses are admitted as accusers, in cases concerning others who are of the same blood, or even any person from the people; and furthermore, an inquiry can, and sometimes must, be instituted, especially when a simple denunciation concerning the validity of a marriage has been made, or when a rumor, presenting a foundation of truth, concerning the existence of an impediment has been divulged.

2. This accusation must be made before the legitimate ecclesiastical Ordinary, and indeed, in writing: if it is made orally, it must be rendered judicial according to the rules handed down by common law, namely, by ensuring that the accuser repeats it before the tribunal, and that the chancellor records it in the proceedings. (1)

3. In this [accusation], besides a careful exposition of the facts, all nec-

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essary circumstances and all concurring indications must be recounted; witnesses instructed about the matter must be indicated and named, so that the foundations of the accusation may be known, and the way may be opened for the tribunal to reveal the truth.

TITLE SECOND: Concerning the tribunal to be established.

4. Upon receiving the accusation in this manner, the Bishop himself assumes the office of moderator of the proceedings, or he may delegate it to his general vicar, or to another honest and experienced man from the clergy. (2) Similarly, he will designate another man to perform the office of chancellor, recording in the proceedings whatever pertains to the case, and specifically, to conduct interrogations and examinations, and to record their responses in writing. (3)

5. Furthermore, the Ordinary is entirely obligated to appoint another ecclesiastical man, if one can be found, endowed with knowledge of the law and proven virtue, who will act as the defender of the marriage. He is always free to suspend or remove this defender, if a just cause exists, and to replace him with another who is adorned with those qualities. (1)

(References to previous documents and canons are omitted for brevity, as they are not part of the direct translation of the provided text.)

[*Latin ed. p. 347*]

INSTRUCTION 347

6. These deputations and delegations shall be made in writing by the Ordinary, and their authentic documents, or at least mention thereof, shall appear in the records.

7. It shall be the duty of the moderator of the proceedings to convene the tribunal, to summon the parties and witnesses to appear in court; to grant reasonable extensions of time, whenever requested by those who have a right to them; to issue decrees, and to give instructions for the regular and proper compilation of the proceedings. All of these things shall be written down and recorded in the records themselves.

8. The defender of the marriage, before undertaking the office entrusted to him, shall take an oath before the moderator of the proceedings, upon the Holy Gospels, to diligently and honestly fulfill his office, promising that he will present all that he deems necessary to support the validity of the marriage, both verbally and in writing. The defender of the marriage shall be summoned by the moderator of the proceedings to examine all the records, lest they be vitiated by any defect; to him shall always and at any time be communicated the records of the proceedings, even if they have not yet been published; and his writings shall always and at any time be received, and new terms shall be granted to him, if he requests it, to allow him to complete and present his writings.

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9. If, due to particular circumstances of the marriage, the defender is unable to be present at each record, after the conclusion of the proceedings, the same records shall be delivered to him, so that he may write down any observations that he deems necessary to protect the validity of the marriage; if he suggests other records, these shall be prepared; if he finds from the records already prepared that there are other persons suitable and appropriate for giving testimony who have not yet been examined, he shall propose that these be subjected to examination.

(1) TITLE THIRD

Concerning the method to be followed in preparing the records.

10. Once the tribunal is constituted, the following method shall be followed in preparing the records. Before any testimony is given, the moderator of the proceedings shall require all to take an oath to speak truthfully, and, if the circumstances require it, also to maintain confidentiality, after a suitable warning about the sanctity of the oath, especially if those being examined are uneducated and ignorant. The oath shall be taken upon the Holy Gospels, and in each examination it shall be repeated in the same manner.

11. Those who are to be examined shall always be heard separately. Furthermore, the secretary shall note the day, month, and year of each.

(1) Constit. Bened. XIV, §. 5 up to §. 7 inclusive; and Instruct. S. C. C., from §. These premises up to §. Cum itaque inclusive.

[*Latin ed. p. 348*]

348 INSTRUCTION: The examination must include the name, surname, age, condition, status, and country of origin of each individual, and also whether they have truly taken an oath. 12. After each examination, even if the same person is to be examined multiple times, the chancellor shall, in a clear and understandable voice, read aloud before the same judge the questions and answers, with the faculty of varying or clarifying whatever he deems necessary; then the person being examined shall sign; and if he is illiterate, he shall make his mark with the sign of the Cross; and finally, the moderator of the proceedings and the defender of the validity of the marriage shall affix their signatures, and the chancellor shall record the proceedings. 13. If it should happen that those being examined are located in foreign and perhaps distant regions, and are unable to appear before the tribunal, a detailed account of the facts and circumstances, of which knowledge and confirmation are required, shall be provided by the moderator of the proceedings, which, with carefully prepared and appropriate questions regarding the opinion of the defender of the marriage, and with the names of those being examined indicated, shall be sent to the Ordinary of the place where they reside, so that he, either personally,

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or through his general vicariate, or through another honest and experienced man chosen from the clergy, may subject them to examination according to the given questions, after first requiring them to take an oath to speak truthfully, and with all other requirements observed as prescribed above. If, however, someone who is to be examined should die, a document of death shall be included in the records. 14. With regard to those called or to be called to judgment, the moderator of the proceedings must inquire into their integrity and credibility, and for this purpose, he will ensure that testimonial letters are presented from their parish priests, or, if that is not possible, from other trustworthy persons, which shall also be recorded in the proceedings. 15. First among those to be examined is the person who brought the accusation against the marriage. From this person, it must be ascertained that he clearly and distinctly states the title of the accusation; that he faithfully and religiously recounts all the facts, and provides proof thereof; that he explains all the circumstances and evidence, whether known from his own knowledge or learned from the accounts of others; and finally, that he names the witnesses, whom he knows, or at least believes, to be informed about the matter. 16. Secondly, the spouses themselves come, who must always be heard separately, so that each may defend their rights, and may either accept, reject, or explain the reasons, objections, and facts presented. Either party subjected to examination may, if they wish, propose articles, either immediately after the examination, or even subsequently, before the proceedings are closed.

[*Latin ed. p. 349*]

INSTRUCTION 349 concerning those matters upon which one spouse should be examined; and inasmuch as the articles of this section are presented, the spouse who was first examined shall again be summoned, so that he may be heard concerning the articles proposed by the other. According to the diversity of cases, inquiry shall be made of the spouses, so that, if they have any documents pertaining to their marriage, or to the customs of their conjugal life, they shall exhibit them, to be recorded in the proceedings. Whatever documents of any kind are presented, and by whomever they are presented, they shall always be received; and the clerk shall note the day, month, and year, as well as the name of the person from whom they were presented.

17. If both spouses are in agreement in their testimonies, the moderator of the proceedings and the defender of the marriage shall diligently examine whether collusion has occurred between them. In this case, the individual arguments against their testimonies, arising from the proceedings, shall be distinctly presented to them, so that, if any fraud exists, the truth may be clearly revealed as far as possible.

18. After the spouses, the witnesses who have been summoned shall be examined, observing the method of examination described above, and the

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information obtained from them shall be noted, concerning those matters about which they are considered to be informed. The interrogations shall be conducted individually, as the title of the accusation, or the collection of facts and circumstances presented, or the nature and capacity of the witnesses themselves, may require, and it is left to the sagacity and prudence of the moderator of the proceedings and the defender of the marriage to arrange, increase, or diminish them, provided that, nevertheless, everything that is considered necessary or appropriate for rendering a just judgment shall always be inquired into.

19. Those matters which are contained in the proceedings shall not be communicated to anyone, not even to the spouses themselves or their defenders, before the publication of the proceedings, except to the defender of the marriage, who shall always and at any time be free to inspect and examine the proceedings.

20. If, in the opinion of the moderator of the proceedings or the defender of the marriage, no other evidence is required, the collection of evidence shall be concluded, and the proceedings shall be published, with a decree on this matter issued, signed by the moderator, the defender of the marriage, and the clerk.

21. After the proceedings have been published, opportunity shall be given for defenses, which the parties may wish to present in order to protect their rights, and they shall be given the opportunity to use the defenders whom they prefer; indeed, they shall be warned of this right.

(1) The method described above, which is consistent with the proceedings in many cases, is found in the Instructions of the Sacred Congregation of the Council, as can be seen up to and including section §. In section §, the examination is completed.

[*Latin ed. p. 350*]

350 INSTRUCTION: So that access to any unjust accusation or appeal against it may be precluded by a wide consensus. However, if allegations are presented by the same parties, they shall be communicated to the defender of the marriage bond, so that he may refute them and, to the extent that they impugn the validity of the marriage, disprove them. (1) TITLE FOUR: Concerning the pronouncement and publication of the sentence. 22. After all the aforementioned proceedings have been completed, the time will come to pronounce the sentence. In order that this may be done properly by the Ordinary or his delegate, first, a declaration must be obtained from the defender of the marriage, stating that he has nothing further to present or inquire about; then, the entire case must be examined by two or three expert men, if they can be obtained, and the sentence shall not be pronounced until their opinion has been heard. This shall be recorded in writing, and the reasons upon which it is based, drawn from the proceedings, shall be explained briefly, but in such a way that nothing essential is omit-

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ted. The sentence shall be notified to the parties by the official of the curia, with a copy being left with them, of which a written acknowledgment shall be obtained. 23. If the judge pronounces a sentence in favor of the validity of the marriage, and neither of the spouses appeals against it, nor does the defender of the marriage appeal, the case shall be considered concluded. On the contrary, if the marriage is declared null, even though the spouses have reached an agreement in court with the Prelate, the defender of the marriage must appeal, and request a new sentence from another tribunal; and the first judge shall never be able to prevent this appeal for any reason whatsoever. In the meantime, the parties shall not be permitted to enter into new marriages. Although there are no fixed deadlines for filing an appeal for the defender of the marriage, care must be taken to do so as soon as possible. If the defender himself neglects this duty, he can be compelled to do so by his own Bishop, or even by that to whom the appeal is legally due. (2) 24. Considering the special condition of dioceses of the East, the order of appeal shall be as follows. If the first sentence is issued by the episcopal curia, §. (1) Consult Instruction S. C. Concilii from §. 8 to §. 10, as well as Instruction Quatenus S. C. C. to the defender up to §. Lo- eus inclusive. (2) Compare Constitution ad finem. Bened. XIV from §. Omnibus absolutis.

[*Latin ed. p. 351*]

INSTRUCTION 351: If the scope of the matter is broad, an appeal shall be made to the patriarchal court; but if it originates from the patriarchal court, the appeal shall be made to the Holy See. Furthermore, appeal must always be made to the same Holy See whenever the first two judgments are not in conformity with each other, unless it pleases the parties to refer the case to the Holy See from the beginning and immediately.

TITLE V: Concerning the second instance.

25. Upon the making of an appeal, the Bishop or Ordinary who rendered the first judgment must remit it, along with the entire process, and all other matters pertaining to the renewed judgment, to the tribunal to which the appeal has been made.

26. This tribunal will carefully examine everything that has been carried out by the first tribunal, and will undertake all that appears necessary, so that defects may be remedied, doubts clarified, and errors corrected. For this purpose, a defender of the bond will always be present in the court, either one who is regularly appointed or one specially delegated; he will examine the spouses, institute investigations concerning the documents presented to the first tribunal, and hear again witnesses from whom new information may be obtained. Indeed, he may even order that a new process be completed from the beginning. However, unless there are valid reasons for requiring a new process, it will be more prudent, especially if the circumstances of the persons and places suggest it, to use the process already completed, with further investigations being conducted as he deems

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necessary. If, however, he believes that a new process must be carried out, the method described above must be followed. If, on the other hand, he believes that only certain new documents need to be added, or that something new needs to be investigated, the defender of the marriage must always be present, or at least these new matters must be communicated to him, so that he may examine them in the exercise of his office, and may, as he sees fit, oppose his objections to them.

27. After the examination of the first process has been completed, and after any new investigations have been conducted, the judge of the appeal must inquire of the defender of the marriage whether he has anything further to present or to investigate; and, after he has declared that he has nothing further, having heard him in the manner described above, the judge will pronounce a judgment, observing all that has been prescribed for the tribunal of the first instance.

[*Latin ed. p. 352*]

352 INSTRUCTION 28. When both judgments conform and are pronounced regarding the validity of the marriage, let the party impugning the marriage know that they still have the full right to appeal to the Apostolic See. Furthermore, if in the second judgment, as in the first, the marriage is judged to be null and void, and if that party or their defender, according to their conscience, does not believe it necessary to appeal, it is within the power and discretion of the spouses to contract new marriages, provided that neither of them is prohibited from doing so by any impediment or legitimate cause. However, the power granted to the spouses after a second conforming judgment, as mentioned above, is understood with the reservation that the law or privilege concerning matrimonial causes always remains firm and valid, which, for any length of time, never lapses into a settled matter; but if a new fact is discovered that was not presented or was ignored, the matter can be resumed and again brought into judicial controversy. If, however, the second judgment concerns nullity, and one party appeals, or if the defender of the marriage does not believe it is permissible to agree, because it seems manifestly unjust or otherwise invalid to them, the entire matter must be presented to the Holy See, and in the meantime, both spouses remain prohibited from contracting new marriages. (1) PART TWO. —TITLE SIX: Concerning the rules to be observed in treating matrimonial causes in particular. Besides the rules previously mentioned, which must be observed in all matrimonial causes in general, in order that their legal validity remain intact, certain special rules must also be kept in mind, according to the particular nature and character of the impediments that have given rise to the judgment. Therefore, some specific observations should be made regarding these, at least those that occur most frequently. ARTICLE FIRST: Concerning impediments of carnal or spiritual consanguinity, and affinity. 29. If a

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marriage is impugned on the grounds of an alleged impediment of carnal or spiritual consanguinity, or of affinity, it will be easy to demonstrate the existence of such an impediment through authentic documents. Indeed, carnal consanguinity, and even affinity, which arises from a previous marriage,

*) Regarding those matters explained in this fifth title, see the Constitutions of Benedict XIV from § 10 to § 12.

[*Latin ed. p. 353*]

INSTRUCTION 353: In order that the impediment of consanguinity may be determined, the genealogical tree of both families must be examined, which must be prepared "from the records of marriages, as well as from the baptismal records, in which the names of not only the spouses, and those who were baptized, but also the names of their parents must be noted." (1) Similarly, spiritual affinity can be clearly ascertained from the baptismal and confirmation records, because in these records the names of godparents and godmothers must also be recorded, along with those who were baptized or confirmed. Such documents must be obtained in authentic form from the aforementioned records by the parish priest or the curia, along with a testimony of their identity with the respective entries in the records; indeed, if a testimony has been given by the parish priest, it will be necessary for the signature of that same parish priest to be declared authentic by the episcopal curia. (2)

30. If any doubt arises concerning the aforementioned documents or their veracity, relatives, affine, and close acquaintances, to whom the origin of those about whom we are speaking is known, or may be known, must be summoned and legally examined, so that, according to the reasoning in *s. 30 q. 1*, the consanguinity extends up to the seventh degree. (1) The impediment, inclusive up to the fourth degree, is legally established by the ancient tradition that no marriage is permitted within the direct line. Canon 35, question 3, deals with the impediment of consanguinity. Canon 1, question 1, deals with the prohibition of marriage between a man and his wife's sister after the first generation. However, concerning spiritual affinity, the spiritual fraternity was entirely abolished, and the spiritual paternity was restricted by the Council of Trent, Session 17, chapter 24. Therefore, wishing to provide for all things with due concern, etc. Today, the Synod has established that "only one, whether man or woman, is legally permitted to marry within the fourth degree, inclusive, as expressly stated in canon. It is not permitted for one and one baptized person, according to the institutions of the sacred canons, or who have received baptism, among whom are relatives and affine, to marry, nor is it permitted for the baptized person to marry their godfather or godmother, nor their father or mother, nor for the godfather or godmother to marry the baptized person, nor any other person within the fourth degree of consanguinity or affinity. From

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now on, such a marriage cannot be contracted without a dispensation, and this prohibition generally applies to the godfather or godmother, the father, and the mother." (2)

In ancient law, spiritual affinity was threefold: spiritual fraternity, spiritual paternity, and spiritual maternity. Spiritual fraternity is like brotherhood, as stated in canon 1, clause 30, question 1. Spiritual paternity is like fatherhood, as stated in canon 4. Spiritual maternity is like motherhood, as stated in canon 4. Thus, spiritual paternity and maternity exceed spiritual fraternity. That affinity, and the confirmed person, and their father and mother, and the godfather or godmother, do not extend beyond the fourth degree, and all impediments between other persons of this spiritual affinity are entirely abolished.

(*) Understand by affinity the relationship arising from a lawful marriage, for an unlawful marriage only establishes consanguinity up to the second degree, inclusive. This is established by the Council of Latran, IV, and by the Council of Trent, Session XXIV, chapter 4, on the Reformation of Marriage, Acts, Volume XVIII, page COXI.

[*Latin ed. p. 354*]

354. It is to be clearly determined by instructions whether the impediment arises from the degree of consanguinity or affinity. Public reputation can also serve as a basis for this matter, and due consideration must be given to it; however, its origin and the reasons upon which it is based must be carefully examined. Furthermore, the judge must always keep in mind that authentic documents provide the primary basis for resolving these questions, and it is never permissible to judge otherwise, unless it has been established by certain and evident arguments that the documents themselves are either flawed or false. Therefore, the ordinaries of the places concerned will diligently ensure that baptismal, confirmation, and marriage registers, as well as records of the deceased, are carefully extracted and preserved by the parish priests.

ARTICLE SECOND: Concerning the impediment of public honesty.

31. Whenever a marriage is challenged on the grounds of an impediment that is called "public honesty," it must first be carefully determined whether it originated from a marriage that was simply valid, or from betrothals.

(1) In the former case, documents must be presented to prove the previous marriage, which documents can be readily provided by the marriage registers kept by the parish priest, if the marriage was celebrated before the Church; or by records existing with heretical or schismatic ministers, if it is asserted that the marriage was contracted among them. Although documents, whether originating from civil authority alone, or from heretics or schismatics, may sometimes have the force of confirming the fact of

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a marriage celebrated outside of the jurisdiction, the Catholic judge who is about to render a judgment on the existence or non-existence of the impediment will ensure that the parties, witnesses who were present at the marriage celebration, and relatives of those who contracted the marriage, are brought before the court.

(1) Before the Council of Trent, an impediment to marriage, not of public honesty, arose from betrothals, whether consummated or not, and had force both for the future and the present. The Council decreed that this impediment, even if invalid (provided the invalidity did not arise from a defect of consent), no longer arises from betrothals, and that, for this reason, betrothals are no longer considered impediments, whatever their nature, except in cases where they are invalid. This is expressed in Canon 6 of the Code of Canon Law on Betrothals and Marriages, and the impediment extended up to the fourth degree inclusive.

XXIV. After the Council of Trent, while the ancient law remained firm concerning impediments arising from consanguinity, it was established in Session 3, Chapter 1, of the Council of Trent concerning Reforms, that the impediment arising from betrothals should not extend beyond the third degree.

[*Latin ed. p. 355*]

INSTRUCTION 355: Furthermore, all those who have been instructed in the matter should be informed, so that they may know all that can contribute to properly judging the case.

32. If the aforementioned impediment is alleged to have arisen from betrothals contracted with a person of the other party who is related by blood to the degree that constitutes an impediment, two things must be investigated before rendering a judgment: namely, whether the alleged betrothals actually took place; and whether they are valid in the canonical sense.

The first must be deduced from the confession of the parties, provided that these confessions are not subject to any exceptions; from documents, if they are available; from the testimony of credible witnesses in Merens; and also from indications that a skilled and experienced judge may be able to deduce from the circumstances, which are presented about the facts or which preceded or followed them.

To prove the second point, namely whether the alleged betrothals were valid in the canonical sense, several things must be carefully considered. Above all, the judge must keep in mind that, in almost every place, there are certain special forms that have been introduced for the solemn celebration of betrothals, which are commonly and regularly observed by all. Therefore, it must be investigated whether these forms were observed or not; if they were, there will be a presumption of the validity of the betrothals,

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against which it will never be judged, unless it is established by certain and evident arguments that the betrothals were not entered into at all; if not, it must be investigated why the customary forms were omitted, and whether, given the circumstances of the persons, places, and customs, the betrothals were nevertheless validly contracted, since in both cases the true intention to obligate each other was present, and thus, according to law, they constitute an impediment. For this purpose, among other things, it must be inquired what words or actions were used to promise each other the future marriage; whether the promise proceeded from both parties; and if only from one, whether the other accepted it, either by words, or by actions, or by signs of equal value; whether, after the given promise, the supposed betrothed considered themselves obligated to enter into marriage, or whether they were free. It must also be investigated about the condition of the betrothed, whether it was such that it cannot be presumed that they truly intended to obligate each other mutually.

33. As the case requires, it will also be necessary to inquire about the age at which the supposed betrothed promised each other marriage. Indeed, betrothals contracted by children, or by an adult with a child, are null by law, and do not generate a public impediment. Therefore, in this case, it must be inquired about the legitimate age of those from whom the betrothals were contracted, which will be easily ascertained by requesting documents.

[*Latin ed. p. 356*]

356. The investigation of the mind shall proceed from the books of the baptized and from the testimony of parents, or others who know the persons in question. If it is established that betrothal was initiated during childhood, it must be investigated whether it was renewed, or at least ratified, after seven years. 34. If, as sometimes happens, the betrothal was contracted by the parents, the judge will endeavor to ascertain the age of the children when their parents entered into the same agreement; for if they were still in childhood, the agreement is certainly void; but if they were of age, the agreement would be valid only if the children expressly, or at least tacitly, consented, or if, afterward, the parents initiated the betrothal in their name and ratified it. Therefore, it must be inquired into in what manner the betrothal was contracted; the conduct of the children must be examined, whether they celebrated it, or whether, when they learned what their parents had done on their behalf, they in any way approved of it, or whether they protested against it, or at least showed that they were displeased with the aforementioned agreement. For this purpose, those who were present at the contract, or who were able to know the contract and the intentions of the betrothed, shall be examined; also, the conduct of the betrothed themselves must be investigated, both with each other and towards their parents; whether they acted as betrothed, whether they spoke of the fu-

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ture marriage, and whether they showed affection for each other. If it is established that both, or at least one, opposed the marriage and steadfastly resisted the will of the parents, a judgment can be rendered against the validity of the betrothal. If, on the contrary, it is established that they did not resist the parents, or that, at a suitable time, they did not use the power given to them to prevent the marriage, and to dissuade the parents from their purpose, then, ordinarily, a judgment will be rendered in favor of the validity of the betrothal and the impediment. It is said "ordinarily" because if the party who challenges the betrothal asserts that they lacked the freedom to contradict the parents, and to dissuade them from their purpose, the reason for this asserted coercion must be considered.

ARTICLE THIRD: Of the impediment of force and fear.

35. Regarding the impediment of force and fear, it must first be noted that no one shall be admitted to challenge a marriage on this ground, unless they claim to have suffered violence and coercion; but one who has lived in marriage for a long time will be rejected, provided that they were not deprived of freedom and opportunity to complain; so that if, free from fear, they voluntarily live in the conjugal home,

[*Latin ed. p. 357*]

INSTRUCTION 357: If the marital obligations have not been fulfilled, the matter should no longer be heard. For he who, free from coercion or fear, does not avail himself of the opportunity and facility to complain, is considered to consent, and to ratify what he had previously done unwillingly and with a contrary mind. (1) Therefore, first, it must be inquired whether the accusation, as it is said, has been made in a timely manner; and if this has already occurred, the reason for this must be investigated, so that it may be determined whether the accusation should be admitted or rejected. Secondly, it must be kept in mind that only a grave fear, which indeed falls upon a steadfast man, can dissolve marriage, and consequently, all investigations, whether by the moderator of the proceedings or the defender of the marriage, must be directed towards this fear. (2) Furthermore, the gravity of the fear arises from the nature of the threats, from the quality of those from whom they originate, and from those who are said to have suffered them. These three things, therefore, must be especially investigated. 36. Regarding the first, diligent inquiry must be made as to whether those who are accused of having used coercion have been accustomed to act in such a way with the person who claims to have been coerced, as to render their domestic and family life grievous and unpleasant; what specific annoyances were inflicted upon them; whether words full of grave indignation were used, whether an attempt was made to deprive them of their inheritance, whether they were ejected from their paternal home, or whether blows were also added. Regarding the second, it must be considered whether those who are accused of having inflicted violence or fear

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held parental authority and power, or whether those who suffered the violence or fear were in no way subject to them; what was the reason for inflicting the violence, and was it to prevent the proper use or dignity of the marriage from arising from the home? What was the nature, condition, and morals of those who inflicted the violence, how did they usually govern the family, and were they so prone to anger and violence that they would easily do what is said in 2Macc 5:19: "But God did not choose the people for the place's sake, but the place for the people's sake." (1) This is in accordance with the statement in *De Sponsalibus* that a contract is justly considered void by divine law, and therefore invalid, if, apart from all other things, the bride, although she had been unwilling for eleven years at the beginning, was retained; nevertheless, because she received what was given to her and afterwards, through fear, consented. As is stated in *De Sponsalibus*: "If consent is lacking where fear or coercion is present, it is necessary that, even if it seems that consent has been given, the matter of coercion must be inquired into; and no witnesses should be received, if any are mentioned by the aforementioned woman, to prove that she did not consent, unless their names are given, with a delay that excludes the possibility of such proof in due time." (2) The joy of marriage, the outcome of which is to be investigated, is often marred by the consequences that arise from fear.

[*Latin ed. p. 358*]

358. INSTRUCTION: They threatened, they carried out their threats, and they were so hard and obstinate in their intentions that no one dared to contradict them or to object to their plans. Regarding the third point, the following must be considered: first, the sex of the person who is said to have suffered violence; for the mind of a girl is more easily moved than that of a man; then, her age, education, and character, whether she is mild and timid, or strong and steadfast; the manner in which she is accustomed to live in the family, whether under the custody and vigilance of her parents, so that she is always and in all things subject to their authority, or whether she enjoys some freedom, so that she can express her own feelings and act according to her own will; whether her parents have isolated her so much that all opportunity for seeking advice has been taken away from her, and no one has been allowed to speak to her, except those whom they judge capable of giving advice about entering into marriage.

37. Furthermore, it must be inquired whether the person who complains of having been subjected to violence ever had any relationship with the person with whom she later entered into marriage; and whether she ever had any intention of marrying that person. If the answer is affirmative, it must be inquired what caused the change of heart; from what time the intention changed, whether before or after her parents expressed their own will; and whether any suspicion arose from the previous relationship, concerning the propriety of either the person herself or the family from which she

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came, which might have moved the parents to insist on the marriage, as a means of restoring a good reputation.

It must also be investigated what this person did to free herself from the coercion of her parents: whether she used prayers; whether she sought the help of others to persuade her parents to abandon their plan; whether and how she expressed her aversion and opposition to the marriage; whether and how the other party made efforts to truly conclude the marriage.

It must be considered whether, when the marriage contract was to be signed, she freely and without any protestation performed this act; whether any deceit was used to obtain such a signature; how she behaved, whether when the preparations necessary for the marriage were being made, or when she was being urged to give her consent, or when, after giving her consent, the wedding feast was celebrated; whether in all these circumstances she was cheerful, prompt, and joyful, or otherwise.

Also to be considered is her conduct towards the other party, and towards his family; whether she was kind and affectionate; whether she willingly and without opposition performed the duties of marriage, or whether she opposed them, especially because she considered the marriage invalid.

[*Latin ed. p. 359*]

INSTRUCTION 359: concerning the truth, and so that one's own liberty may be better defended. To examine this final act, it must be considered whether it has been demonstrated, and by whom; from what time after the marriage these complaints have begun, and for what cause or reason; whether counsel, exhortations, and similar means have been employed to resolve such disputes and disagreements, and if so, by whom and with what result.

38. To ascertain the aforementioned facts, both spouses, and their parents, shall be summoned to court, especially those who are accused of having used coercion, and they shall be appropriately questioned about the facts themselves, the manner in which they occurred, the intent, and the reason for which they were driven to use force. Furthermore, relatives and acquaintances of the one alleging violence shall be summoned, and questioned about all matters pertaining to the parents or children; whether they have seen or heard anything that appears in the records, or whether they know of anything that has occurred relevant to the matter, either before the marriage was celebrated, during the period of cohabitation, or after the separation of the spouses, if such a separation has taken place. In these examinations, the judge shall diligently ascertain whether there is any reason to suspect collusion, and shall take care to obtain testimony from the pastors regarding the integrity and credibility of each individual.

After these, the parish priest or another priest who attended the marriage shall be summoned; those who were present at the celebration and

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the wedding feast shall also be summoned, so that they may report, especially concerning the manner in which the person contesting the marriage behaved in those circumstances; other individuals shall be summoned, especially those who were used, either to persuade the person contesting the marriage to enter into it, or to encourage them to perform their marital duties, and from them, it shall be inquired what they did, what arguments they used, and what results they achieved.

39. Furthermore, in this matter, the judge should know that marriage is a certain solemn and public act, which should always be considered valid, unless evident reasons demonstrate its nullity. Therefore, every effort and diligence must be made to gather these reasons, but a judgment against the marriage shall never be pronounced, unless the totality of the evidence excludes all reasonable doubt regarding the existence of an impediment.

[*Latin ed. p. 360*]

360 INSTRUCTION. ARTICLE FOURTH. Concerning the impediment of the bond. 40. The bond of a preceding marriage, which is adduced to impugn a subsequent marriage, is asserted to be either from a marriage, celebrated in the Catholic manner, by Catholics; or from a marriage contracted by heretics or schismatics, according to the institutions of various sects, and afterwards dissolved by the sentence of such tribunals; or from a contract between infidels, which afterwards has been rescinded, or has been declared null. The possibility, or even the frequency, of these various cases is manifest, since Catholics are compelled to live in certain regions mixed with heretics, schismatics, and infidels. Certain things must be noted for each of these cases, because they are governed by different laws. 41. With regard to the first case, the Catholic doctrine is that a marriage of baptized persons, rightly celebrated and consummated, cannot be dissolved in any other way than by the death of one of the spouses; and therefore, there is no place for its dissolution to be declared in a court of law, unless it is established that one of the spouses has died. In order that it may be said that this has been established, rumor or any reputation is not sufficient, nor are mere presumptions, but a certain notification is required, or at least a concurrence of such reasons which are equivalent to a certain notification, and which exclude all doubt about it. (1) Therefore, in this case, the judge must first demand that an authentic document of the prior marriage be presented, and, if necessary, he will gather other proofs which demonstrate the existence of the aforementioned prior marriage; similarly, he will inquire about documents or, if none remain, he will proceed in such a way that, as long as the man lives, the matter is presented and resolved: "they may enter into a consortium with others - there - in our presence we inquired - we noticed that they wished to marry, concerning the case in Sponsalia, Cap. In prae sent. 19, it is fitting to consider the number of years, and whether the author of the question is worthy; what is to be done

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concerning women who, through captivity, or the loss of their husbands, have been absent for more than seven years, and have not received certain news of their marriages, which some of you (who are not able to inquire about it) have contracted; whether it is permissible for them to worry about this, or whether they can enter into other marriages. We answer you, after consultation, in the matter of the Concordat, Cap. 2, concerning the certainty of the deceased spouse, whether, in youthful age, or through the frailty of the flesh, they have used means to obtain news, so that no spouse should presume that the other is dead, during his life, until certain news arrives.

[*Latin ed. p. 361*]

INSTRUCTION 361 concerning proofs regarding a second marriage contracted; all of these documents can easily be obtained from the marriage books kept in the parishes. After these, authentic documents regarding the alleged death of the former spouse will be required from the competent parish priests, and if these are lacking, the same may be requested from the civil authority, if it has books in which such matters are recorded. These must be compared with the document proving the second marriage, so that it may be determined whether the second marriage was contracted before or after the death of the former spouse; and thus it will be judged whether the second marriage is valid or not.

42. When authentic documents are not available, nor can they be, to prove the death of the former spouse, other arguments and other proofs are necessary, which will be diligently gathered by the judge. First, evidence can be obtained from the testimony of trustworthy witnesses, if they themselves have truly affirmed that they saw the death of the person in question occur; or they may assert it based on hearsay, provided that they testify that they have obtained their information not from some vague report, but from persons who are not at all suspect. These witnesses will be questioned as to whether they knew the person they claim is deceased; at what time and place the death occurred; for what reason; where the body was buried; whether others are present, and where they can be found, who have been informed about this event or could have been. From those who testify based on the information of others, it will also be inquired from whom they obtained such information; from what time the news of the death began to spread; and what they themselves think about the credibility and trustworthiness of those who first spoke about this matter; whether these individuals have or could have had any particular reason to spread such news. Once these things are known, the witnesses summoned will be subjected to the same examination, so that eventually either witnesses who saw the event can be found, or certain documents can be obtained. The judge should note that those who come forward voluntarily for examination should not be admitted, because they are presumed to be

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lying; and if they are summoned, he should ask them from whom, where, when, how, before whom, and how many times they were summoned; whether anything was given, promised, remitted, or offered to them by those who have an interest in the matter, or by others on their behalf, for giving this testimony. Similarly, it should be noted that witnesses who do not fully know the persons involved should not be admitted; and consequently, outsiders are not suitable witnesses, unless they have been in the place for a long time, or from particular circumstances it appears that they could have had knowledge of the things they are recounting.

[*Latin ed. p. 362*]

362 INSTRUCTION: It cannot be determined with certainty, whether by sight or by hearing, whether a person has died, unless all the circumstances surrounding the case are considered and carefully weighed, so that it may be ascertained whether, from the totality of these circumstances, that moral certainty can arise which is necessary to render a judgment. (1) Furthermore, these circumstances are of primary importance: the age of the person who is said to have died, whether they were elderly or young; the time elapsed since their departure from their homeland and family, whether it has been a long or short time; the place or places to which they went, whether these places are harmful to physical health, or what hardships they have been subjected to there, for example, whether war or pestilence has raged there; the physical constitution of the person, whether they were healthy and robust, or weak and infirm. It will also be necessary to consider the reason why they left their home, whether it was for business or to practice some art, or rather, to abandon their spouse. This can be ascertained from benevolent or unfavorable accounts, which the spouses had with each other during their marriage, or whether the one who left continued to communicate with the other spouse, either by letter or by messengers; if it is established that there was once a custom of such correspondence or communication, and then it ceased, without any apparent cause or reason for the cessation, a strong presumption of death will be held. On the contrary, if it is established that the person who left never had any correspondence with their family, or with relatives and friends, this will provide a purely negative indication and cannot constitute proof. It will also be necessary to consider the type of life that the person led in a foreign land; if they chose to pursue a military life, or if they devoted themselves to the art of navigation or to service on a ship, and it is known in which army they served, or on which ship they worked, inquiries must be made with the commanders of that army, and with the captains or officials of the ship. If the places where they resided are known, investigations must be carried out in each of those places, and especially in the place where they were last seen, when their traces were lost. The court will employ suitable persons, if they are available, or even civil authorities, requesting them to

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conduct appropriate investigations in every way possible, and also to call upon public newspapers, with an indication of the name, surname, country, profession, and condition of the person being sought. Furthermore, if possible, the court will (1) The Abbot in Cap. Sponsal. no. 6, says that this matter is left to the judgment of the wise, so that, after all things have been carefully considered, certainty may be reached as to whether death has occurred. In summa.

[*Latin ed. p. 363*]

INSTRUCTION 36: Furthermore, it is to be ordered that public edicts be affixed in the places where the aforementioned [person] has resided, and that each individual be encouraged to provide any information they may have. If, after employing all these means, nothing can be discovered whatsoever, and if all circumstances point to the death of the former spouse before the second marriage in question, the judge will not be able to issue a sentence against the second marriage; for there would be no proof of its invalidity. However, if the matter concerns the validity of a marriage to be contracted, it will never be permitted until it is certain that the former spouse is deceased.

43. But if the matter is not one of invalidity, but rather that the first marriage was annulled for another reason, certain things must be observed. Firstly, it must be noted that, according to the Evangelical and Apostolic doctrine, a marriage validly celebrated cannot be dissolved due to adultery, or due to a burdensome cohabitation, or due to a long and protracted absence of one of the spouses, or for any other reason by heretics or schismatics.

Therefore, if it is established that a tribunal of heretics or schismatics has dissolved the previous marriage for one of the aforementioned reasons, a cause in favor of the second marriage will not be admitted or entertained by a Catholic tribunal. However, if the dissolution was decreed for another reason recognized by Canon Law, it must be known that any proceedings carried out by a heretical or schismatic tribunal lack legal validity, and it is absolutely not permissible for a Catholic judge to render a judgment based solely on those proceedings. Therefore, in such a case, the cause must be instituted anew and conducted according to the sacred canons. However, it is not forbidden, and sometimes it is advisable, to request the records of the heretical or schismatic tribunal, in order to obtain a more complete knowledge of the facts and circumstances. Indeed, if such documents have been presented by the parties, provided that nothing else stands in the way,

(1) In addition to what has been explained so far, see the Supreme Instruction for proving the death of a spouse, which is found in Volume VI of these Ephemerides, page 436.

(2) Council of Trent, Session 24, Canon 5: "If anyone says that, because of heresy, or because of a burdensome cohabitation, or because of a protracted

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absence, the bond of marriage can be dissolved, anathema sit."

(2) Saint Paul, in the Epistle to the Romans, says: "Anathema sit." And Canon 7: "If anyone says that the Church errs when she teaches that a woman is bound to her husband as long as he lives, and that those who are joined together in marriage are not bound by law, but by the consent of each, anathema sit." And in 1 Corinthians 7, "I, not the Lord, give this command: Let no wife separate from her husband, but if she does separate, let her remain unmarried, or else be reconciled with her husband." And if anyone says that the bond of marriage of a spouse cannot be dissolved, etc., anathema sit.

[*Latin ed. p. 364*]

364. Instructions may be employed, and indications may be gathered from them. However, the parties must always be heard, and, insofar as it is possible, even individual witnesses must be summoned again to the judgment and questioned according to these rules. Nor should the legal deposition of other persons be omitted, if they are known to be present; nor any other acts which the moderator or defender of the marriage may deem necessary. If, after considering everything, the judge considers that a sentence should be issued that is in conformity with the sentence pronounced by a heretical or schismatic tribunal, he must never, however, invoke this sentence as the motive for his own judgment; nor should it be considered, in any way, that two conforming sentences are present, from which it is not necessary to appeal.

4A. Regarding marriages contracted in a state of infidelity, if these are declared dissolved by a sentence issued either by civil authority or by any tribunal of infidels, the same rules shall be observed as those stated concerning marriages dissolved by a sentence of a heretical or schismatic tribunal, namely, that a cause must be admitted if the dissolution was proclaimed on the basis of a reason not recognized by the Church, or that the marriage must be considered valid in its entirety if the contrary occurs. If, however, a separation of the spouses occurs without any judgment, it must be observed whether the party who intends to act before the Catholic tribunal entered into the marriage after receiving baptism, or before. If the marriage occurred with a Catholic party after baptism, it must be investigated whether a canonical warning preceded the spouse's infidelity, or at least whether a dispensation from such a warning was granted by legitimate authority. As soon as it is determined whether a warning or a dispensation from it preceded, the first marriage can no longer constitute a bond according to the law of marriage. However, if neither a warning nor a dispensation from it preceded, the first marriage will indeed impede the second, but the Ordinary must suspend the judgment and refer the case, with all its circumstances, to the Holy See, which will indicate to the Ordinary what must be done. In order to prove whether a warning or a dis-

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pensation intervened, the marriage records, or even the court records, must be consulted, in which these matters must always be carefully recorded. If the second marriage was also contracted in a state of infidelity, it must be presumed that, before the person in question was admitted to baptism, all that the sacred canons prescribe for such cases was observed; but if, after proper investigations, doubt still remains, recourse must be had to the Holy See.

[*Latin ed. p. 365*]

365 INSTRUCTION. ARTICLE FIFTH. Concerning whether impotence impedes marriage. 45. Only the spouses are admitted to present a case concerning impotence in marriage, because only they can know this fact, and only they should be concerned about this matter. (1) However, for impotence to invalidate a marriage, it must be antecedent (2) and perpetual, (3) that is, one which cannot be removed by natural and licit remedies. If this impotence is absolute, that is, if it renders conjugal union entirely impossible, it always invalidates the marriage, and with any person; (4) if, on the other hand, it is only relative, it invalidates the marriage only with that person to whom the impotence refers. (5) Therefore, in cases of this kind, investigations must be directed so that the asserted antecedent and perpetual, whether absolute or at least relative, impotence may be established or excluded. 46. For this purpose, first of all, the spouses themselves must be heard, first the one who is the plaintiff in the case. These must be questioned appropriately, as to from what time they have known of this; whether they entered into marriage with the consent of their parents, spontaneously, and with mutual consent; whether they have used the same bed and chamber, and whether they to have willingly and freely performed the duties of marriage; whether they have consummated the marriage; whether the one being examined knows, or suspects, the causes for which he or she has been unable to consummate the marriage, even after repeated attempts; whether this has happened due to a cause or defect on the part of the woman, or on the part of the man; what remedies, or other treatments, have been used, and for how long, and what their effects have been; for how long they have lived together, and slept together; who first deserted the other spouse; what other causes have contributed to producing the separation; whether and to whom they have declared that the marriage has not been consummated, and they must be questioned individually (1). The reason for this provision is: because it concerns them alone, and they, even if not as husband and wife, at least have the relationship of brother and sister. (2) Canon. (3) C. (4) C. (5)

(1) Ratio huius dispositionis est: quia ipsorum solummodo interest, et ipsi » eam etsi non ut uxorem, saltem ha» beat ut sororem. » possunt, si velint, non obstante tali im- (2) Can. pedimento, suo iuri, quod ad accusandum (3) C. habeant, cedere ac invicem cohabitare, non quidem ut coniuges,

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sed ut frater et soror, textu expresso. C. Laudabilem 5, de frigid, et Malefic. - ibi - « Quod » si ambo consentiant simul esse, vir et Iii qui 25. caus. 32, q. 7. Fraternitatis 6. De Frigid, Malefic. (4) C. Accepisti frigid, et malefic. (5) litteris Ex tuis mulierem 3. 1. loc. cit. De

[*Latin ed. p. 366*]

366 INSTRUCTION concerning names. It must be carefully considered whether both spouses agree in their statements; whether there is any suspicion of collusion, and if so, everything and each individual thing must be presented to them, so that any fraud, if present, may be revealed. 47. After hearing the parties themselves, the witnesses presented by those same spouses are subjected to examination, and first, their parents, because they are presumed to be better informed, and then relatives, servants, friends, neighbors, and all those who are considered to be informed about the matter. If any of the witnesses has died, proof of death must be required, among the documents to be reviewed; if, however, someone has left the area, care must be taken to have him examined by the Ordinary of the place where he resides. The witnesses, however, should be questioned, especially about whether they know the spouses about whom they are speaking; whether they know whether they have freely and mutually joined together, whether they have cohabited, whether they have consummated the marriage; what reasons they have been unable to consummate it; whether they have done anything to remove those reasons, and what they have experienced; whether, and of what kind, any difficulties have arisen between them, and what the cause of those difficulties is; from which they know what they are stating; and if they have learned these things from outsiders, how they are called, and where they reside. They should also be questioned about the reputation, both among themselves and among others, concerning the alleged lack of consummation and impotence. If the parties themselves or the witnesses have stated that medicines or remedies have been used, the physician or physicians who prescribed them must be summoned to court and questioned about the nature and quality of the disease with which the spouses were found to be suffering, about the symptoms from which they deduced the nature of the disease; about the physical constitution of the person to whom they provided assistance; about the nature of the medicines used, and also about the effect produced by them. Similarly, they should be questioned whether the person who was subjected to medical treatment, or someone else, has declared that the marriage has not been consummated, or has not been able to be consummated; what they themselves think about such an alleged lack of consummation, and what others think. After the examination of each witness, at least two of the most distinguished experts in medicine and surgery must be selected, who shall examine the body of the man, if the matter concerns his impotence, and,

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according to the proven principles of their art, they shall examine whether he is capable of coition. Before they begin to carry out the task entrusted to them, they shall take an oath to perform their duty with all diligence, and to render a judgment without any partiality towards the parties. Whatever they discover from the examination, they shall write down, and they shall frankly state what they think about the man's impotence; whether they believe it to be acquired, or innate.

[*Latin ed. p. 367*]

INSTRUCTION 367: Whether absolute or relative. These writings, confirmed by the very oath, are delivered to the registrar, so that they may be recorded among the proceedings. 48. Similarly, two midwives, more skilled in their art and practice, and of good reputation, are to be chosen, to whom, after the oath has been taken regarding the faithful fulfillment of their duty, the examination of the woman's body is entrusted. These midwives shall be instructed by at least two experts, one a physician, the other a surgeon, regarding the recognition of the woman's physical condition, according to the precepts of legal medicine. Then, each of them separately, shall, under oath, present in writing or at least orally before the tribunal, what she has found, and shall openly declare what she believes concerning the integrity of such a woman, and regarding her suitability for marital acts, if this is disputed. These reports of the midwives are submitted to the judgment of the physicians, who, in turn, shall report whether the examination was properly performed; whether sufficient elements were obtained from it to render a judgment regarding the condition of such a woman; and whether, for various reasons of doubt, one can deduce concerning her either integrity or even impotence. If, in some places, skilled midwives are not available, and the examination of the woman's body is deemed absolutely necessary, this shall be entrusted to expert physicians, and to honest and experienced women, as it would be entrusted to them if the observations made by the midwives were not found to be conclusive. In these cases, however, an honest woman, bound by oath to secrecy, always assists in the examination. Furthermore, it is readily apparent how carefully one must proceed in all such examinations, so that nothing is done that is contrary to divine law and the virtue of chastity. If, due to particular circumstances of a place, it is sometimes impossible or very difficult to find two expert physicians, and two skilled midwives as well, it may be tolerated to employ only one physician and one midwife. However, in this case, it must be ensured that the reports of both are submitted for examination to two other individuals learned in medicine and surgery, residing there or elsewhere, so that, under oath, they may render their judgment on them, namely, whether they should be accepted, and whether they present reasons that provide a solid foundation for their opinions. 49. This examination of the woman is to be omitted if she is a widow, or if it is established, after separation

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from her husband with whom she is in dispute, or even before, that she has had relations with another man. The physicians and midwives, as far as possible, shall be Catholics.

[*Latin ed. p. 368*]

368 INSTRUCTION: Those who are to be chosen [as witnesses] must be selected; and if it is not possible to obtain them from among Catholics, it may be tolerated to employ non-Catholics, provided that it is established from elsewhere that they are honest and upright, and not guided by a spirit hostile to the Catholic religion. 50. After all these things have been carefully carried out, if everything conspires to prove the asserted impotence, the Ordinary will judge the marriage to be null; but if some doubt still remains, he will abstain from pronouncing a judgment, and will order further and more thorough investigations to be instituted; and if it is impossible to begin these investigations, or if, despite them, doubt always remains, or if it is established only that the marriage was not consummated, and not at all that there is impotence in either party, and the spouses cannot be reconciled, the entire case shall be transmitted to the Holy See, which will provide for it appropriately.

(1) SPECIAL NOTE Regarding the Impediment of a Solemn Vow and Holy Orders. Whenever a matrimonial case arises in which the impediment of a solemn vow of chastity or of Holy Orders, with the chastity attached to it, is involved, such a case, after an informative process has been conducted to gather the necessary documents and reasons, shall be referred by the Patriarchs or other Ordinaries to the Apostolic See.

(2) (1) Regarding what is contained in this fifth article concerning the impediment, we absolutely forbid, as pertains to those who have contracted impotence, that marriages be considered valid in order to separate such persons and to exclude them from the fraternity, according to the definition of the sacred canons, as we have already judged and instructed. (2) (1) Let it be read concerning those things. – there – •« The Council of Trent, session 24, decrees: 'If anyone shall say that clerics who have been constituted in the sacred orders or regular canons, who have solemnly professed chastity, can contract marriage, and that the marriage is valid, notwithstanding the ecclesiastical law or vow, let him be anathema.' – there – •« Presbyters, deacons, subdeacons, and monks are not to have concubines, or to contract marriage.

[*Latin ed. p. 369*]

369 INSTRUCTION regarding ecclesiastical judgments concerning matrimonial causes. (1) PART ONE Concerning the matrimonial process. Matrimonial causes pertain to the ecclesiastical judge, to whom alone it belongs to render judgment concerning the validity of marriage and the obligations derived therefrom. The civil authority judges concerning the purely civil

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effects of marriage. The spouses are subject to the Bishop in whose diocese the husband has his domicile. An exception is made if the conjugal life has been interrupted, either by separation from bed and board, or by malicious desertion perpetrated by the husband. In the former case, either party must exercise the right to accuse the other before the Bishop of the diocese where that party has his domicile. In the latter case, the wife may institute an action before the Bishop within whose diocese her domicile is located. After the judicial citation has been served, a change in the domicile of either spouse does not affect the competent judge. §.3. In order for any matrimonial cause to be undertaken in an ecclesiastical tribunal, it is necessary that a regular and legal accusation against the marriage precede it; which will never be admitted, unless it originates from a person or persons who, by common law, are competent to bring an accusation. Indeed, in some impediments, only the spouses themselves are admitted as accusers, in others, those who are closely related by blood, or even any person from the people, and finally, an inquiry may sometimes be made ex officio, and sometimes must be made, as will also be said below, concerning the excellence and utility of the aforementioned supreme S. Inquisition. (1) The S. Congregation for the Propagation of the Faith, for the Ordinary of the Federated States of America, has issued Instruction No. 1883. This, indeed, is in conformity with the aforementioned supreme S. Inquisition Instructions, and with its or its ss. Canon Law decrees, or Encyclical Letters, as well as with the acts of the Supreme Pontiffs or Constitutions, Tom. XVIII. fase. are, as it were, in agreement with the word, as will be manifest to the reader.

[*Latin ed. p. 370*]

370. If a simple denunciation concerning the validity of a marriage has been made, or if a report based on substantial evidence has been divulged regarding the existence of an impediment, §•4. This accusation must be made before the legitimate ecclesiastical Ordinary, and indeed, in writing: if it has been made orally, it must be made judicial, according to the rules established by common law, namely, by ensuring that the accuser repeats it before the tribunal, and that the notary records it in the proceedings. §. 5. In it, besides a careful exposition of the facts, all necessary circumstances and all concurring indications must be set forth; witnesses instructed in the matter must be indicated and named, so that the foundations of the accusation may be known, and the way may be opened for the tribunal to discover the truth. §.6. Upon receiving the accusation in this manner, the Ordinary himself will assume the office of moderator of the proceedings, or he will delegate it to his general vicariate, or to another honest and experienced man from the clergy. Similarly, he will designate another man to perform the duties of a notary, recording in the proceedings whatever pertains to the cause, and specifically, to conduct interrogations of

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witnesses and to record their answers in writing. §.7. Furthermore, the Ordinary is absolutely bound to appoint another ecclesiastical man, endowed with knowledge of the law and proven virtue, who will act as the defender of the marriage. He is always free to suspend or remove him if there is a just cause, and to replace him with another, endowed with those qualities. §. 8. These appointments and delegations must be made in writing by the Ordinary, and authentic documents thereof, or at least mention thereof, must appear in the proceedings. §•9. It will be the duty of the moderator of the proceedings to convene the tribunal, to summon the parties and witnesses to appear in court; to grant extensions of time, whenever reasonably requested by those who have the right to do so; to issue decrees and orders for the regular and proper compilation of the proceedings. All of these things must be written down, and recorded in the proceedings themselves. §.10. Before assuming the office entrusted to him, the defender of the marriage shall take an oath before the moderator of the proceedings, in the presence of God.

[*Latin ed. p. 371*]

INSTRUCTION 371. Having promised, in the Gospels, to diligently and incorruptly fulfill his office, the defender of the marriage undertakes to present all that he judges to contribute to upholding the validity of the marriage. This defender of the marriage shall be summoned by the moderator of the proceedings to any documents, so that they may not be subject to any flaw of nullity; to him shall always and at any time be communicated the documents of the process, even if not yet published, and his writings shall always and at any time be received, and new terms shall be extended, if necessary, so that he may complete and present those writings. § 11. If, due to particular circumstances of the marriage, the defender of the marriage is unable to be present at each document, after the completion of the proceedings, the same documents shall be delivered to him, so that he may note down the observations which he judges necessary for the preservation of the validity of the marriage; if he suggests other documents, these must be prepared; if, from those already prepared, he discovers other persons to be present, suitable and opportune witnesses who have not yet been examined, he shall propose that these be subjected to examination. § 12. Once the tribunal is constituted, this method of preparing the documents shall be followed. From all and each witness who is to give testimony, the moderator of the proceedings shall first demand an oath of truthful testimony, and if the circumstances require it, also an oath of maintaining secrecy, after a suitable warning about the sanctity of the oath, especially if those being examined are uneducated and ignorant. The oath shall be made upon the Holy Gospels, and in each examination it shall be repeated in the same manner. § 13. Those who are to be examined shall always be heard separately. Furthermore, the secretary shall note the day, month, and

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year of each examination, as well as the name, surname, age, condition, status, and country of origin of each person, and also that they have truly taken the oath. § 14. After each examination, even if the same person is to be examined more than once, the secretary shall, in a clear and understandable voice, read aloud before the person being examined the questions and answers, with the understanding that the person has the freedom to vary or declare whatever they deem appropriate; then the person being examined shall sign; and if the person is illiterate, they shall make their mark; finally, the moderator of the proceedings and the defender of the validity of the marriage shall append their signatures, and the secretary shall record the act. § 15. If it should ever happen that those being examined are located in foreign and perhaps distant regions, and are unable to appear before the tribunal, a mo-

[*Latin ed. p. 372*]

372. The instructor of the cause must carefully examine the facts and circumstances, the knowledge of which and the confirmation of which are required, and a report must be prepared, which, through carefully formulated and appropriate questions, including the opinion of the defender of the marriage, and with the names of those to be examined indicated, shall be sent to the Ordinary of the place where they reside, so that he, either personally, or through his general vicariate, or through another upright and experienced man chosen from the clergy, may subject them to examination according to the given questions, after first requiring them to take an oath to speak truthfully, and with all other prescribed procedures observed. If, however, it should happen that someone to be examined has died, a document of death shall be included among the records. § 16. With regard to those summoned or to be summoned for examination, the instructor must inquire into their probity and credibility, and for this purpose, he will ensure that testimonial letters are presented from their respective parishes, or, if that is not possible, from trustworthy persons, which shall also be included in the records. § 17. Among those to be examined, the first is the one who brought the accusation against the marriage. From this person, it must be inquired, so that he may clearly and distinctly state the title of the accusation; that he faithfully and religiously recount all the facts, and provide proof thereof; that he explain all the circumstances and evidence that he knows from his own knowledge, or that he has learned from the accounts of others; and finally, that he name the witnesses of whom he is informed, or at least believes, regarding the matter. § 18. Secondly, the spouses themselves come, who must always be heard separately, so that each may defend their rights, and may present, or reject, or explain reasons, arguments, and facts. Either party subjected to examination may, immediately after the examination, or even subsequently, before the process is closed, if they wish, propose articles concerning which the other spouse

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should be examined; and to the extent that such articles are proposed, the spouse who was first examined must again be summoned to be heard regarding the articles proposed by the other. According to the diversity of circumstances, it must be inquired of the spouses whether they have any documents relating to their marriage, or to their marital life, and these must be presented in the records. Whatever documents of any kind are presented, they shall always be accepted; and the secretary must note the day, month, and year, as well as the name of the person from whom they were presented.

[*Latin ed. p. 373*]

INSTRUCTION 373 §. 19. If both spouses have agreed in their testimonies, the moderator of the proceedings and the defender of the marriage should diligently investigate whether collusion exists between them. In this case, specific arguments contradicting their testimonies, as they arise from the proceedings, should be clearly presented to them, so that, if any fraud exists, the truth may be clearly revealed, if possible. §. 20. After the spouses have been summoned, witnesses shall be called, observing the manner of examining them as described above, and the information obtained from them regarding those matters about which they are considered to be informed. The questions to be asked should be tailored to each individual, according to whether the title of the accusation, or the collection of facts and circumstances presented, or the nature and capacity of the witnesses themselves, require it; the moderator of the proceedings and the defender of the marriage are left to their discretion and prudence to arrange, expand, or diminish these questions, provided that they always inquire into all that is considered necessary or appropriate for rendering a just judgment. §. 21. What is contained in the records shall not be communicated to anyone, not even to the spouses themselves or their defenders, before the publication of the proceedings, except to the defender of the marriage, to whom it will always be free to inspect and examine the records at any time. §. 22. As far as the moderator of the proceedings or the defender of the marriage do not require any other evidence, the collection of evidence shall be concluded, and the proceedings shall be published, with a decree on this matter issued by the moderator, the defender of the marriage, and signed by the secretary. §. 23. After the proceedings have been published, opportunity shall be given for the parties to present defenses in order to protect their rights, and they shall be granted the opportunity to use the defenders of their choice; indeed, they shall be informed of this right, so that, once a judgment has been rendered, access to any unjust accusation or claim against it shall be denied. However, any defenses presented by them shall be communicated to the defender of the marriage, so that he may examine them and refute them to the extent that they challenge the validity of the marriage. §. 24. After all the above has been completed, the

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proceedings shall proceed to the pronouncement of a judgment. In order that this may be done properly by the Ordinary or his delegate,

[*Latin ed. p. 374*]

374. PRIMUM, declaratio ab eo qui matrimonium defendit exquiri debet, ut manifestet se nihil amplius desiderare aut interrogare; deinde, causa integra duobus aut tribus viris peritis, si tales inveniantur, submittetur ad examen, et sententia non proferetur nisi postquam eorum sententia audita fuerit. Haec omnia scriptis erantur, et in ea momenta rationum, quibus sententia fundatur, ex processu deprompta exponuntur, succincte quidem, sed ita tamen, ut nihil essentiale omittatur. Sententia notificabitur partibus per notarium curiae, subcripta a judice et secretario, et sigillo curiae episcopalis, et exemplum illius sententiae partibus relinquetur, de quo in scripto fides erga illud mandabitur. §. 25. Si iudex sententiam dixerit pro validitate matrimonii, et nemo ex coniugibus contra eam appellaverit, nec defensor matrimonii appellabit, et causa finita censeatur. Contra, si matrimonium nullum fuisse decreverit, quamvis coniuges iudicio Praelati reconciliati fuerint, defensor matrimonii appellationem facere debebit, et novam sententiam ab alio tribunali postulare; quam appellationem primus iudex impedire nulla unquam ratione poterit. Interim, nullatenus permittetur partibus novas nuptias contrahere. Quamvis appellationi interponendae nulli termini statuti sunt defensori, tamen diligenter curandum est ut id quam primum fiat. Quod si defensor ipse hoc munus neglexerit, compelli ad id poterit vel a suo Episcopo, vel etiam ab illo, apud quem de iure appellatio esset facienda. §. 26. Ordo appellationis erit prout sequitur. Si prima sententia a Curia episcopali lata fuerit, appellatio fiet ad Curiam metropolitanam; si vero a Curia metropolitana ea prodierit, appellabitur ad Curiam metropolitanam viciniorem. Ad S. Sedem appellatio erit semper facienda, quoties primae duae sententiae inter se non concordant, nisi partibus placuerit causam ad ipsam S. Sedem ab initio et immediate deferre. §. 27. Facta appellatione, Episcopus seu Ordinarius qui primam sententiam protulit, eam remittere debebit una cum integro processu, ceterisque omnibus ad caussam iterum iudicandam pertinentibus, ad tribunal ad quod appellatum est. §. 28. Hoc autem omnia a primo tribunali diligenter examinabuntur, atque ea omnia peragentur quae necessaria videbuntur, ut de-

[*Latin ed. p. 375*]

INSTRUCTION 375: "Deficiencies shall be supplied, doubts shall be clarified, and errors shall be corrected." For this purpose, with the defender of the bond always present, either in the court established for this purpose or specially delegated, the judge will examine the spouses, will institute investigations concerning the documents presented to the prior tribunal, and will again hear witnesses, from whom new information may be obtained. Indeed, he may even prescribe that a new process be carried out anew from

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the beginning. However, as long as valid reasons are lacking for requiring a new process, it will be more prudent, especially if the circumstances of the persons and places suggest it, to utilize the process already completed, with further investigations undertaken as he deems necessary. If, however, he judges that a new process must be carried out, the method described above must be followed. If, on the other hand, he believes that only certain new documents need to be added, or that something new needs to be investigated, the defender of the marriage must always be present, or at least these new matters must be communicated to him, so that he may, according to his office, examine them and, if he deems it necessary, append his own observations to them.

§ 29. After the examination of the first process has been completed, and after any new investigations have been concluded, the judge of appeal must inquire of the defender of the marriage whether he has anything further to present or to investigate; and if he states that he has nothing further, after having been heard, as declared above, by some men skilled in the law, he will pronounce judgment, observing all that has been prescribed for the tribunal of first instance.

§ 30. When both judgments have been pronounced, conforming with each other regarding the validity of the marriage, the party impugning the marriage should know that he still has the right to appeal to the Apostolic See. But if, furthermore, in the second judgment, as in the first, no marriage is declared null and void, and if that party or the defender, according to his conscience, does not believe that an appeal should be made, it is within the power and discretion of the spouses to contract new marriages, provided that neither of them is prohibited from doing so by any impediment or legitimate cause. However, the power to marry, after a second judgment conforming with the first, as above, is granted to the spouses, always preserving and maintaining the law or privilege of matrimonial causes, which, for any length of time, never pass into res judicata; but if a new matter, which has not been presented or has been ignored, is discovered, the case may be resumed and again brought into judicial controversy. If, however, the party appeals from the second judgment concerning nullity, or if the defender of the marriage appeals for him,

[*Latin ed. p. 376*]

376 The Instruction does not hold that one should acquiesce in matters of conscience, if it seems to them to be manifestly unjust or otherwise invalid, the entire matter having been brought before the Holy See; meanwhile, the prohibition to both spouses regarding any other marriage should remain in force.

PART TWO: Regarding the matters to be observed in specific matrimonial causes. Besides the rules already mentioned, in all matrimonial causes, in order that their validity remain legally sound, certain special consider-

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ations must be kept in mind, according to the particular nature and character of the impediments that have given rise to the case. Therefore, some of these, at least those that occur more frequently, should be specifically noted.

ARTICLE I. CONCERNING IMPEDIMENTS OF CARNAL OR SPIRITUAL CONSANGUINITY, AND OF AFFINITY.

§ 31. If a marriage is impugned on the grounds of an alleged impediment of carnal or spiritual consanguinity, or of affinity, it will be easy to demonstrate the existence of such an impediment through authentic documents. Indeed, carnal consanguinity, and also affinity, which arises from a previous marriage, are determined by means of a genealogical chart of both families, which must be prepared from marriage records, and also from baptismal registers, in which the names of not only the spouses, and those who were baptized, but also the names of their parents, must be noted. Similarly, spiritual consanguinity is clearly revealed from the baptismal and confirmation registers, because in them, along with the names of those who were baptized or confirmed, the names of their godparents or godmothers must also be recorded. Such documents must be obtained in authentic form from the aforementioned registers, by the clergy or the curia, along with a testimony regarding their identity with the respective entries in the registers; indeed, if a testimony has been given by a priest, it will be necessary for the signature of that priest to be declared authentic by the episcopal curia.

§ 32. If any doubt arises concerning the aforementioned documents or concerning their veracity, the parties involved must be summoned to court, and legally examined.

[*Latin ed. p. 377*]

INSTRUCTION 377 concerning the investigation of consanguinity, affinity, and kinship, ensuring that the origin of those involved is known or can be ascertained, so that the degree of consanguinity or affinity may be more clearly determined from the testimonies of witnesses. This matter can also be based on public reputation, which must be taken into consideration; however, its origin and the reasons upon which it is based must be carefully examined. Furthermore, the judge must always keep in mind that, in resolving these matters, authentic documents provide the primary basis, and it is never permissible to judge contrary to them, unless it has been established by certain and evident arguments that they themselves are corrupt or false. Therefore, the ordinaries of the places will diligently ensure that baptismal, confirmation, and marriage registers, as well as records of the deceased, are meticulously extracted and accurately preserved by the parish priests.

ARTICLE II. CONCERNING THE IMPEDIMENT OF PUBLIC

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HONESTY.

§ 33. Whenever a marriage is challenged on the grounds of an impediment known as public honesty, it must first be carefully determined whether it originated from a marriage that was simply valid, or from betrothals. In the former case, documents confirming the celebration of the previous marriage must be presented as evidence of the impediment, which documents can easily be provided by the marriage registers kept by the parish priest, if the marriage was celebrated before the Church, or by records existing with heretical ministers, if it is claimed that the marriage was contracted among them. Although documents, whether originating from civil authority or from heretics, may sometimes have the force of confirming the fact of a marriage celebrated outside of the Church, the Catholic judge, who will be rendering a judgment on the existence or non-existence of the impediment, will ensure that the parties involved, witnesses who attended the marriage celebration, relatives of those who contracted the marriage, and all those whom he knows to be informed about the matter, are brought before the court, so that everything that can contribute to a proper judgment of the case may be ascertained.

§ 34. If the aforementioned impediment is alleged to have arisen from betrothals contracted with a person of the same blood in a degree constituting an impediment, two things must be presented for judgment.

[*Latin ed. p. 378*]

378 It is necessary to inquire, namely, whether the asserted betrothal truly took place, and whether it can be considered valid in the canonical sense. First, it must be deduced from the confession of the parties, provided that these confessions are not subject to any significant exceptions, from documents if they are available, from the trustworthy testimonies of witnesses in Merens, and also from the indications which a skilled and experienced judge can deduce from the circumstances that preceded, accompanied, or followed the event. Secondly, it must be proven whether the asserted betrothal was valid in the canonical sense. Several things must be carefully considered. Above all, the judge must keep in mind that, in almost every place, certain specific forms are found, by custom and usage, for the solemn celebration of betrothals, which are generally and regularly observed by all. Therefore, it must be inquired whether these forms were observed, or not; if they were observed, there will be a presumption of the validity of the betrothal, against which it will never be judged, unless it is established by certain and evident arguments that the betrothal was in no way contracted; if not, it must be inquired as to the reason why the customary forms were omitted, and whether, considering the circumstances of the persons, places, and customs, the betrothal was nevertheless validly contracted, in that the will to obligate oneself was truly present

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in both parties, and thus constitutes an impediment according to law. For this purpose, among other things, it must be inquired as to the words, or actions, by which they promised each other the future marriage; whether the promise proceeded from both parties; and if only from one, whether the other accepted it, either by words, or by actions, or by signs of equal value; whether, after the given promise, the alleged betrothed considered themselves obligated to enter into marriage, or whether they considered themselves free. It must also be inquired about the condition of the betrothed, whether it was such that it cannot be presumed that they truly intended to obligate themselves to each other. § 35. As the case requires, it will also be necessary to inquire as to the age at which the alleged betrothed promised each other marriage. Indeed, betrothals contracted by infants, or by an adult with an infant, are null by law, and do not create an impediment to public decency. Therefore, in this case, it must be inquired as to the legitimate age of those from whom the betrothal was contracted, which can easily be done by requesting documents from baptismal records, and from the testimony of parents, or others, who know the persons in question. If it is established that the betrothal was initiated in infancy, it must be investigated whether it was renewed, or at least ratified, after seven years.

[*Latin ed. p. 379*]

INSTRUCTION 379, ARTICLE III. CONCERNING THE IMPEDIMENT OF FORCE AND FEAR. § 36. Regarding the impediment of force and fear, it must be noted first of all that no one should be prevented from having a right to be admitted to marriage on this ground, unless it is proven that they have suffered violence and coercion; on the contrary, one who has lived in marriage for a long time should not be rejected, provided that they have not lacked freedom and opportunity to complain; thus, if someone, already free from fear, voluntarily remains in the conjugal home and has not neglected marital duties, they should not be heard further. For he who, being free from coercion or fear, does not avail himself of the opportunity and means to complain, is considered to consent, and to ratify what he had previously done unwillingly and with a contrary mind. Therefore, first of all, it must be investigated whether the accusation, as it is said, was made at an opportune time; and if this is the case, then it must be inquired into for what reason this happened, so that it may be judged whether the accusation should be admitted or rejected. Secondly, it must be kept in mind that only a grave fear, which indeed falls upon a steadfast man, can dissolve a marriage; and consequently, all investigations, whether by the moderator of acts or the defender of the marriage, must be directed towards ascertaining this fear. Furthermore, the gravity of fear arises from the nature of the threats, from the quality of those from whom those threats originate, and from the quality of those who are said to have suffered them. These three things, therefore, must be especially investigated. § 37. Regarding

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the first, it must be diligently inquired whether those who are accused of having used force are accustomed to act towards the person who claims to have been coerced in such a way as to render domestic and family life grievous and burdensome for them; what specific acts of harassment were inflicted upon them; whether words full of grave indignation were used, whether there was an attempt to deprive them of their inheritance, whether they were ejected from their paternal home, or whether blows were also added. Regarding the second, it must be considered whether those who are accused of having used force or fear held parental authority and power, or whether those who suffered force or fear were in no way subject to them; what was the reason for inflicting the force, namely, whether it was for the sake of obtaining some benefit for their own home, or for the sake of obtaining honor? What was the character, condition, and morals of those who inflicted the force? How did they usually govern the family? Were they so prone to anger and violence that they would easily...

[*Latin ed. p. 380*]

380 They carried out the threats they had made, and were so hard and obstinate in their hearts, that they would not allow anyone to contradict them or to object to their plans. Regarding the third point, consideration must be given first to the sex of the person who is said to have suffered violence; for the heart of a girl is more easily moved than that of a man; then to her age, education, character, whether she is mild and timid, or strong and steadfast; to the manner in which she lives in the family, whether she is under the custody and vigilance of her parents, so that she is always and in all things subject to their authority, or whether she enjoys some freedom, so that she can express her own feelings and act according to her own will; whether her parents have isolated her so much that all opportunity for seeking counsel has been taken away from her, and they have allowed her to speak only to those whom they judge capable of giving advice about entering into marriage.

§ 38. Furthermore, it must be inquired whether the person who complains of having been subjected to violence has ever had any relationship with the person with whom she afterwards contracted marriage; and whether she has ever had any intention of marrying that person. If the answer is affirmative, it must be inquired what were the reasons for the change of will, from what time the intention was changed, whether it was before or after the parents showed their own will; and whether any suspicion arose from the previous relationship, concerning the propriety of either the person herself or the family from which she came, which might have moved the parents to insist on the marriage as a remedy for recovering a good reputation. It must also be investigated what this person has done to free herself from the coercion of her parents: whether she has used prayers; whether she has sought the help of others to persuade the

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parents to abandon their plan; whether and how she has expressed her aversion and opposition to the marriage; whether and how the other party has endeavored to truly conclude the marriage.

It must be considered whether, when the marriage contract was to be signed, she freely and without any protestation performed this act; whether any fraud was used to obtain such a signature; how she behaved, whether when the preparations necessary for the marriage were being made, or when she was being urged to give her consent, or when, after giving her consent, the wedding feast was celebrated, whether in all these things she was cheerful, prompt, and joyful, or otherwise. It must also be considered her manner of acting towards the other party, and towards his family; whether she was kind and affectionate, whether she willingly and without opposition offered herself to the marital duties.

[*Latin ed. p. 381*]

INSTRUCTION 381: If such [circumstances] have occurred, especially if she has considered the marriage null, and in order to better safeguard her own liberty. To prove this latter fact, it must be considered whether disputes and contentions have arisen between the spouses on this account, whether this fact has been demonstrated, and by whom, from what time after the marriage these complaints began, and for what reason or cause, and whether any measures, exhortations, or advice have been employed to resolve such disputes and disagreements, and if so, by whom and with what result. § 39. To ascertain the aforementioned facts, both spouses, and their parents, shall be summoned to court, especially those who are accused of having used coercion, and they shall be appropriately questioned about the fact itself, the manner in which it occurred, the intent, and the purpose for which they were led to use force. Furthermore, relatives and acquaintances of the one alleging violence shall be summoned, and questioned about all matters relating to the parents or children, whether they have seen or heard anything, or know anything that has happened in connection with the matter, either before the marriage was celebrated, during the period of cohabitation, or after the separation of the spouses, if this has occurred. In these examinations, the judge shall carefully observe whether there is any reason to suspect collusion, and shall take care to obtain testimony from the pastors regarding the integrity and credibility of each individual. After these, the parish priest or another priest who assisted at the marriage shall be summoned; those who were present at the celebration and the wedding feast, so that they may report, especially, about the manner in which the person who is objecting to the marriage behaved in those circumstances; other individuals shall also be summoned, especially those who were used either to persuade the objecting party to enter into the marriage, or to encourage them to perform their marital duties, and they shall be questioned about what they did, what arguments they used, and what

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results they achieved. § 40. Furthermore, in this matter, the judge should know that marriage is, in itself, a certain solemn and public act; which should always be considered valid, unless evident reasons demonstrate its nullity. Therefore, every effort and diligence must be made to gather these reasons, but a judgment against the marriage shall never be pronounced, unless the totality of the evidence excludes all reasonable doubt about the existence of an impediment.

[*Latin ed. p. 382*]

382 INSTRUCTION, ARTICLE IV. ON THE IMPEDIMENT OF THE BOND. § 41. The impediment of a prior marriage, which is adduced to impugn a subsequent marriage, is alleged to arise either from a marriage validly celebrated in the Catholic manner by Catholics; or from a marriage contracted by heretics or according to the rites of various sects, and afterwards dissolved by the judgment of such tribunals; or from a contract between non-believers, which afterwards has been rescinded, or has been declared null. The possibility, or even the frequency, of these various cases is manifest, since in regions of America Catholics are compelled to live in association with heretics and non-believers. Certain considerations must be noted for each case, since they are governed by different laws. § 42. With regard to the first case, Catholic doctrine teaches that a marriage of baptized persons, duly celebrated and consummated, cannot be dissolved in any other way than by the death of one of the spouses; and therefore, there is no place for its dissolution to be declared in a court of law, unless it is established that one of the spouses has died. However, it is not sufficient to say that this is the case based on rumor or any report whatsoever, nor on mere presumptions, but a certain notification is required, or at least a concurrence of circumstances equivalent to a certain notification, which excludes all doubt on the matter. Therefore, in this case, the judge must first demand that an authentic document of the prior marriage be presented, and, if necessary, he will gather other proofs which demonstrate the existence of the aforementioned prior marriage; similarly, he will seek documents or proofs of the second marriage contracted; all of which documents can easily be obtained from the marriage books kept in the parishes. After these requirements, authentic documents from the competent parish priests regarding the prior death of one of the spouses will be required, and in the absence thereof, the same may be requested from the civil authority, if it has its own books in which such matters are recorded: These must be compared with the document proving the second marriage, so that it may be determined whether the second marriage was contracted before or after the death of the prior spouse; and thus it will be

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judged whether the second marriage is valid or null.

[*Latin ed. p. 383*]

INSTRUCTION 383 • §. 43. When authentic documents proving the death of a former spouse are not available, nor can they be obtained, other arguments and other proofs are necessary, which must be diligently gathered by the judge. First, evidence can be derived from the testimony of trustworthy witnesses, if they themselves have truly affirmed having witnessed the death in question, or if they assert having heard of it, provided that they testify that they have obtained this information not from some vague source, but from persons who are not at all suspect. These witnesses must be questioned to determine whether they knew the person who is said to have died; at what time, in what place, and for what reason the death occurred; where the body was buried; and whether there are others present who are informed about this event, or who could be informed. Furthermore, from those who testify based on the information of others, it must also be inquired from whom they obtained such information, from what time the news of the death began to spread, and what they themselves think about the credibility and trustworthiness of those who first spoke about this matter, whether these individuals have any particular reason or could have had a reason to spread such news. Once these things are known, the witnesses brought in will be subjected to examination, and in the same way, they will be examined, so that eventually, either witnesses who have seen the event can be found, or certain documents can be obtained. The judge must take care not to admit those who spontaneously come forward for examination, because they are presumed to be lying; and if they are summoned, he must ask them from whom, where, when, how, before whom, and how often they were summoned; whether anything was given, promised, remitted, or offered to them by those who have an interest in the matter, or by others on their behalf, for giving this testimony. Similarly, it must be noted that witnesses who do not fully know the persons involved should not be admitted; and consequently, outsiders are not suitable witnesses, unless they have been in the place for a long time, or from particular circumstances, it appears that they could have had knowledge of the things they are recounting. If witnesses, whether those who have seen the event or those who have heard of it, cannot be obtained, then all the circumstances surrounding the event must be considered and carefully weighed, to see whether from the totality of these circumstances, that moral certainty can arise which is necessary to pronounce a judgment. Furthermore, these circumstances are particularly important: the age of the person who is said to have died, whether they were older or younger; the time of their departure from their homeland and family, whether it was a longer or shorter time; the place or places to which they went, whether their physical health was harmed,

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or subjected to what changes, for example, whether there were wars or plagues in Buschbell.

[*Latin ed. p. 384*]

384. INSTRUCTION: It must be considered whether the person in question has been seen by anyone; the physical constitution of that same person, whether it was healthy and robust, or weak and infirm. It will also be necessary to examine the reason why that person departed from their own home, whether it was for business or to practice some art, or rather, to abandon their spouse. These things can be ascertained or deduced from benevolent or adverse accounts, which the spouses had with each other during their marriage, or whether the one who departed continued communication with the other spouse, either by letter or by messengers; if it is established that there was, for a time, such a custom of correspondence or communication, and that it ceased afterward, without any apparent cause for the cessation, a strong presumption of death will be held. On the contrary, if it is established that the person who departed never had any communication with their family, or with relatives and friends, this will provide merely a negative indication and will not be able to provide any proof.

It will also be necessary to consider the type of life that the person who departed embraced in a foreign region; if they chose to pursue a military life, or to dedicate themselves to the art of navigation or to the service of a ship, and it is known in which army they served, or on which ship they worked, inquiries must be made with the commanders of that army, and with the governors or officials of the ship. If the places where they resided are known, investigations must be conducted in each of those places, and especially in the place where they resided when their traces were lost. The tribunal will employ suitable persons for this purpose, if they are available, or even civil authorities, requesting them to conduct appropriate investigations in every way possible, and also to call upon public newspapers, with an indication of the name, surname, country, profession, and condition of the person being sought. Furthermore, if it is possible, the tribunal will endeavor to ensure that public notices are posted in the places where the person resided, and that everyone is encouraged to provide any information they may have.

If, after employing all of these means, nothing can be found, and if all the circumstances point to the death of the former spouse before the second marriage, which is the subject of the inquiry, the judge will not be able to pronounce a judgment against the second marriage; for there would be no proof of its nullity. However, if the matter concerns the validity of a marriage to be contracted, it will never be permitted until it is certain that the former spouse is dead. But if the issue is not based on this point, but rather because the first marriage was contracted in heresy and has been

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annulled for another reason, certain things must be observed. And first, it must be noted that the Gospel...

[*Latin ed. p. 385*]

INSTRUCTION 385: It is the Apostolic doctrine that a validly celebrated marriage cannot be dissolved on account of adultery, nor on account of intolerable cohabitation, nor on account of the long and affectionate absence of one of the spouses, nor on account of any other reason alleged by heretics. Therefore, if it is established that, for any of the aforementioned reasons, a marriage was dissolved by the tribunals of heretics, a cause in favor of a second marriage will not be admitted, or even introduced, by a Catholic tribunal. However, if the dissolution was decreed for another reason recognized by Canon Law, it must be understood that the acts performed by a heretical tribunal lack legal validity, and it is by no means permissible for a Catholic judge to render a judgment based solely on those acts. Therefore, the cause must be instituted anew and treated according to the sacred canons. However, it is not forbidden, and indeed it may sometimes be expedient, to request the acts of the heretical tribunal, in order to obtain a fuller knowledge of the facts and circumstances. Indeed, if such documents have been presented by the parties, provided that nothing else stands in the way, they can be used, and evidence can be gathered from them. However, the parties must always be heard, and, as far as possible, even individual witnesses should be called again and questioned according to these regulations. The legal testimony of other persons must not be omitted if they are known to be present; nor must other acts be omitted which the moderator or defender of the marriage may deem necessary. After considering everything, if the judge believes that a sentence should be issued that is in conformity with the sentence pronounced by the heretical tribunal, he must never invoke this sentence as his own judgment; nor should it be considered, in any way, that there are two identical sentences, from which it is not necessary to appeal.

§ 45. Regarding marriages contracted in a state of infidelity, if these are said to have been dissolved by a sentence issued either by civil authority or by any heretical tribunal, the same rules must be observed as those stated regarding marriages of baptized persons, dissolved by a sentence of a secular tribunal, namely, that a cause should not be admitted if the dissolution was proclaimed on the basis of a reason not recognized by the Church, or that the cause must be instituted anew in its entirety if the contrary occurs. If, however, the separation of the spouses occurs without any judgment, it must be observed whether the party who intends to bring a case before the Catholic tribunal contracted a second marriage after receiving baptism, or before. If a marriage occurred with a Catholic party after receiving baptism,

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it must be investigated whether the spouse was still living at the time.

[*Latin ed. p. 386*]

386. The canonical inquiry of the faithful, or at least a dispensation concerning the same inquiry, must have been obtained from a legitimate authority. As long as the inquiry or its dispensation has not taken place, the first marriage cannot constitute a bond according to the law of marriage; but if neither the inquiry nor its dispensation has preceded, the first marriage will indeed impede the second, but the Ordinary must suspend the judgment and refer the case, with all its circumstances, to the Holy See, which will indicate to the Ordinary what must be done. To prove whether an inquiry or its dispensation has taken place, the marriage records, or even the court records, must be consulted, in which these matters must always be carefully noted. If the second marriage has been contracted in infidelity, it must be presumed that, before the person in question was admitted to baptism, all that the sacred canons prescribe for such cases has been observed; but if, even after proper investigations, doubt remains, recourse must be had to the Holy See.

ARTICLE V. CONCERNING THE IMPEDIMENT OF IMPOTENCE.

§. 46. Only the spouses are admitted to challenge a marriage on the grounds of impotence, because only they can know this fact, and only they should be concerned about this matter. However, for impotence to invalidate a marriage, it must be antecedent and perpetual, that is, one which cannot be removed by natural and licit remedies. If this impotence is absolute, that is, if it makes conjugal union completely impossible, it always invalidates the marriage, with any person; but if it is only relative, it invalidates the marriage only with that person to whom the impotence itself refers. Therefore, in cases of this kind, investigations must be conducted so that the asserted antecedent and perpetual impotence, whether absolute or at least relative, may be either established or excluded. For this purpose, the instructions of the Supreme Congregation of the Holy Office must be kept in mind.

§. 47. If a case arises for which provision has not been made in this instruction, it must be treated according to the norms of common law, and a decision must be made accordingly.

[*Latin ed. p. 387*]

387 LETTERS from the Most Holy Pope Leo XIII to the Archbishops and Bishops of Borussia. Concerning the condition of the Catholic cause in Germany. It has long been Our desire, Venerable Brothers, to address you, so that we might discuss with you the present conditions of the Catholic cause in Germany. — We greatly desired, for a particular reason, to express

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the magnitude of paternal charity and concern with which We embrace you and your beloved children; and also to congratulate you on that entirely apostolic zeal with which We see you all, Venerable Brothers, inflamed in the service of your flock. We understand, in particular, the cares which you have constantly applied yourselves to, so that the Catholic people, entrusted with your faith, might never be led away from virtue, from piety, and from the path of salvation. — It was also very pleasing to Our heart to make known to you the comfort and joy which We experience, both from the great devotion with which all the Catholic people of Germany adhere to you and listen to your words, and also from the discipline and concord which are increasingly flourishing among them. What could not be accomplished before, We now hope to achieve through this letter, which We freely send to you, trusting that, through the benefit of Divine Providence, a day may soon arrive which will bring happy beginnings for religion and the Church in Germany. No one among you, Venerable Brothers, is unaware that the mutual concord which happily and favorably existed for a long time between this Apostolic See and the Kingdom of Borussia has been subjected to great and unexpected disturbances, especially due to those extensive laws by which Catholic citizens have been brought into grave distress and sorrow. — But this calamity, which greatly grieved Our Predecessor, the blessed and remembered Pope Pius IX, and also Us, has, with God's help, provided an opportunity for the virtue and constancy of pastors and of the faithful of Germany to shine forth even more brightly. This virtue and constancy are all the more worthy of commendation, because while they diligently dedicate themselves to defending the cause of the Church, they have never departed from the faith and from the due obedience to the authority of the Prince, nor from the love of their country; and to their detractors, they have shown it in deed.

[*Latin ed. p. 388*]

388 The letters have shown, not with regard to civil matters, but concerning the duties of religion, that they are moved solely by the desire that the work of God be held sacred and inviolate. Hence, it has come to pass that the very Author and Dispenser of merits, God Himself, has poured forth the most abundant gifts of His goodness and graces, not only upon you, Venerable Brothers, but also upon the entire flock of your diocese. For even though, due to new laws, the number of priests among the faithful in Borussia is diminishing day by by, and in many parish churches there are those who are lacking to administer the sacred rites to the faithful; even though deceitful men, falsely claiming to be old Catholics, are spreading new and perverse doctrines and attempting to lead their disciples astray through fraud, we have nevertheless rejoiced to see the chosen sons of Catholics from Germany holding fast to the faith of their fathers with unwavering fidelity; nowhere do they yield to the snares of wicked teach-

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ers; but, with a spirit of great fortitude, they overcome dangers, and are moved by an even greater devotion to the Church, as they perceive that it is beset by such grievous trials. From these things, we have felt that the pain we have suffered on account of the aforementioned laws has been alleviated, and with a pious heart, we have offered praise and thanks to God, who has miraculously bestowed that strength of spirit upon the hearts of His children; and, having had the opportunity, we could not refrain from publicly commending the virtue of you and these Catholic peoples. But these things were not sufficient for our Apostolic ministry, by which we are compelled to watch lest the state of the Church suffer any detriment, or lest the inner life of the same Church be subjected to any disturbances, unless, as far as is within our authority and our zeal, we should strive to remove the present difficulties. Therefore, we have spared no effort, and have neglected no duty, to have those laws repealed, which have brought about prolonged distress to the Church, and great toil to yourselves. And it has been, and still is, our earnest desire to restore the harmony and peace that have been so deeply undermined, so that we have not failed to declare to the highest authorities that it is our intention to remain obedient to their will, as long as it is permitted by divine laws and the dictates of conscience. Indeed, we have not hesitated to make this intention manifest through clear arguments; and we are determined to spare nothing, even in the future, that may contribute to the restoration and strengthening of harmony. But, as we pursue this which is the object of our hopes and aspirations, we must also...

[*Latin ed. p. 389*]

LETTERS 389. It must be ensured, above all, that laws enacted by public authorities do not contradict the principles of Catholic doctrine, especially in matters concerning what is most sacred and ancient to the piety of the faithful; and also that they do not impede the proper freedom of Bishops in governing their Churches according to divinely established norms, and in establishing institutions for the education of youth in seminaries, according to the prescriptions of canon law.

Although we are bound by a sincere desire for peace, it is not lawful for us to dare to do anything against those things which have been divinely established and sanctioned; and for these, if it were necessary to defend them, we would certainly not hesitate to undertake the greatest efforts, following the example of our predecessors. You, Venerable Brothers, are not unaware of the intimate nature of the Church, and how the divine Founder Himself established it, and what rights flow from it, which it is permitted to no one to undermine or despise. Indeed, as We have recently declared in Our encyclical letter *Immortale Dei*, the Church is a supernatural society and is perfect in its order. Just as it has as its purpose to lead its children to eternal blessedness, so it is endowed with the safeguards and means given by God, by which it makes them partakers of the eternal good,

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beginning on earth and in this earthly warfare, the building which will have its highest summit and its greatest glory in the heavens. It belongs solely to the Church to determine matters concerning its interior life, the reason for which was established by Christ the Lord, the restorer of our salvation. Christ commanded that this power, free and subject to no one, should be held by Peter and his successors, and under the authority and teaching of Peter, it should be held by the Bishops in their respective Churches. This power of the Bishops naturally includes the discipline of the clergy, both in matters pertaining to the sacred functions, and in those pertaining to the life of the priesthood; for the presbyterate is united to the Bishop as strings to a lyre (1). Furthermore, since the priestly order, so sublime a heritage of ministry, is never renewed in its essence through the succession of those who follow one another, and since it is necessary that those who are called to this order strive, with all sincerity, to follow in the footsteps of those whom Christ chose as the first sowers of the faith, in doctrine and in the innocence of life, it is clear to all that the right and the duty of teaching and instructing young men, whom God has chosen with a special grace to be His ministers and dispensers of the mysteries (1) [Ignatius, *Ad Ephesios*, c. XV], belong to the Bishops alone.

[*Latin ed. p. 390*]

390 Letters from their own. — And indeed, if it is said that all nations ought to receive the doctrine of religion, how much more justly does the care pertain to the Bishops, that, with the greatest possible diligence and through the help of those whom they have most thoroughly approved, they may impart the food of sound doctrine to those who are to be the salt of the earth for their ministry, and who are to fulfill their mission as ambassadors for Christ among men? The Bishops are not only bound by this most serious duty, but also by the further obligation of applying their vigilance to the good of the students of the sacred order, and of instilling in them, from their youth, sentiments of solid piety, without which neither are they worthy of the honor of the priesthood, nor are they able to properly fulfill its duties. You, Venerable Brothers, having been taught by reason and experience, know best how arduous and how long a work it is to form and instruct such young men. For, since those who have chosen God as their inheritance in their early years are bound, according to the precept of the Prince of the Apostles, to exhibit to the eyes of the Christian people a living example of virtue and continence, it is necessary that they learn, under the guidance of Bishops and chosen instructors, to master their desires, to despise earthly things, and to aspire to heavenly things, so that, armed with these thoughts and inflamed with this love, they may be able to conduct themselves chastely and uprightly amidst the corruptions of the world. Moreover, it is necessary that they quickly become accustomed to being of constant and fearless spirit in the task of explaining the Catholic truth to

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the people and of defending it, which the world despises and pursues with stubborn hatred. What, Venerable Brothers, would be expected if, when the times demand a more vigorous struggle for the cause of the Church, the men of the sacred order, having not previously been prepared, through the help of holy discipline and charity, to adhere faithfully to their Bishops, to heed their voices, and to fear nothing in proclaiming whatever is necessary in the name of Jesus Christ? The discipline of the young men, which is imparted in seminaries and other institutions of the sacred order, is that by which the students of the sacred order, far from the ardor of human concerns, are properly instructed for the due performance of their apostolic duties, and for cheerfully enduring all the hardships and labors of life for the salvation of souls. It is that which, with vigilant Bishops and priests chosen by them, who have long experience in sacred discipline, causes the students to learn to measure their own strengths and to know what they are capable of; and the pastors, in turn, having learned the talents and character of each, can knowingly determine who are worthy of the honor of the priesthood, and take care that none are unworthy.

[*Latin ed. p. 391*]

LETTER 391: Either he shall be introduced to the sacred orders, or he shall be dismissed. But who can hope to obtain such salutary results, unless the sacred pastors possess the power to remove obstacles and to employ suitable means to achieve this? – In this matter, since the people of your nation, besides other virtues, also excel in the glory of arms, it would be unthinkable that those who govern the republic would allow young men, who receive the rudiments of military training in military institutions to lead troops and administer military affairs, to learn the science of arms from others rather than from experts in the art of war, and to acquire discipline, the use of equipment, and a martial spirit from others rather than from suitable military instructors? From this, it is easily understood why, from the most ancient times of the Church, the Roman Pontiffs and Catholic Bishops have taken every care to establish colleges for candidates for the sacred orders, in which they, either by themselves or with the help of approved masters, whom they sometimes selected from among the priests of the Cathedral Church, would cultivate in them knowledge, more profound doctrines, and, above all, the virtues worthy of their vocation. Even now, the houses that were once opened by bishops and monasteries to receive clerics are celebrated in the memory of men, and among them, the illustrious Patriarch of the Lateran Palace still shines, from which, as from a fortress of wisdom and virtue, the highest Pontiffs and the most distinguished bishops in sanctity and doctrine have emerged. And this concern for the careful and diligent discipline of clerics has been considered so important that, from the very beginning of the sixth century, the Council of Toledo, concerning those who, by the will of their parents, were dedicated to the clerical office

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from the earliest years of childhood, decreed that, as soon as they were tonsured or had begun the ministry of readers, they should be instructed in the house of the Church under the supervision of the Bishop by a Prefect. – From this, it is clear why we so strongly contend for a just and weighty cause, that the seminaries of your dioceses should be established, ordered, and arranged according to the norms that the Fathers of the Council of Trent, as is well known and widely disseminated, have laid down. Indeed, there was no other reason why the Apostolic See, when, among the Roman Pontiffs and the supreme rulers of the republic, agreements and treaties were concluded for various reasons at different times, diligently took care and consulted about the sacred seminaries, and ensured that the right of the bishops to govern them was protected and safeguarded above all other powers. Documents clearly attest to this, among others, the Apostolic Letters, which begin with the words "De salute animarum," issued by our blessed predecessor, Pope Pius VII, on the eighteenth day of July in the year 1821.

[*Latin ed. p. 392*]

392 Letters concerning the convention initiated by Us with the King of Prussia, in which matters pertaining to the new delineation of dioceses were discussed. Therefore, it is fitting that bishops be granted complete and unrestricted right and power to dedicate themselves to the work of nurturing the faithful soldiers of Christ in the seminaries; it is fitting that priests, according to their judgment, choose others to be assigned to various ministries, and that no impediment be placed in the way of their faithfully fulfilling their pastoral duties. From these things which We have decreed, you see, Venerable Brothers, how truly and justly We have declared that, for the sake of a blessed and stable concord, so long desired, it is necessary that broad laws be established in such a way that the freedom of the Church, essential for living and acting, be preserved. And We are confident that those who govern the state will render justice to our cause, and will grant us what We request on behalf of the most sacred rights. And indeed, Our requests are not such that anything would be taken away from those in power concerning their dignity and authority; rather, great benefits for the public good and solid advantages flow from them. For those things which are presented to the people by you, Venerable Brothers, and your collaborators in the ministry of the word, concerning matters pertaining to their duties towards civil authority, are most fitting: namely, that every soul ought to be subject to higher powers not only for the sake of punishment, but also for the sake of conscience (1); that public burdens should be borne with a just spirit; that one should abstain from turbulent councils and disturbances; that, with fraternal charity, mutual love should be shown, and that mutual duties should be observed in human society with fidelity. Moreover, if the number of your collaborators were to increase beyond what it is now, from

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this increase would also grow the number of those whose task it is to spread salutary teachings among the people; and at the same time, it would be easier for the parish churches, long deprived of comfort, to be entrusted to the care of proven priests, which is the most fervent desire of Catholics. Furthermore, as you know, Venerable Brothers, there are many seeds of public disturbances within the bosom of human society, like fires scattered everywhere, which threaten a fierce conflagration, in which, above all, the cause of the workers is concerned, causing those who govern the state to be anxious, seeking a remedy.

(1) Romans XIII, 5.

[*Latin ed. p. 393*]

LETTERS 393: Let the ministers of the Church encounter dangers with courage, and let them obstruct the path of the adherents of sects, who lie in wait at every opportunity to profit from public evils, and to devise new schemes, to the great detriment of the commonwealth. — It is truly astonishing how much the ministers of the Church can contribute to the betterment of human society through their works; and we know that this has happened in times of storms and calamities. For priests, who, by reason of their ministry, have almost daily intercourse with people of lower social standing, and who are accustomed to converse with them familiarly and intimately, know the labors and sorrows of this kind of people; they observe the sufferings of their hearts more closely; and, drawing forth suitable aids from the fountains of the divine religion, they are well-suited to offer those consolations and remedies which can most effectively alleviate the sting of present evils, restore broken strength, and restrain minds from rash and turbulent designs. Moreover, men of the sacred order, imbued with that spirit which the Church imparts to her ministers, can render a powerful and useful service in those distant regions and those remote from civil society, in which several European princes have established colonies at this time. — The rulers of the GERMANIC lands not only strive to promote the establishment of colonies and to expand their territories, but also to open up new avenues for industry and commerce. And they will also deserve the highest praise for their concern for the welfare of the nations, inasmuch as they endeavor to civilize and refine the uncivilized and savage peoples. — It is of great importance to win over the hearts and minds of rude and uncivilized peoples, to teach them immediately the salutary precepts of religion, to lead them to perceive the true appearance of virtue and honesty, and to make them aware of the dignity of the sons of God, to which they, too, are called by the merits of our Redeemer. With these matters foremost in their minds, the ROMAN Pontiffs have diligently and zealously striven to send heralds of the Gospel to uncivilized peoples. And indeed, this work does not belong to soldiers, to civil magistrates, or to rulers, although they reap abundant benefits from it; but it belongs to those men, as history

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testifies, who, coming forth from the Church, undertake the labors and dangers of sacred expeditions, and who, as messengers and interpreters of God, do not fear to travel among barbarian peoples, readily offering their lives and blood for the salvation of their brethren. Considering all these things in our mind and heart, we are encouraged to hope that, with God's inspiration and favor, our wishes will...

[*Latin ed. p. 394*]

394 The letters are filled with hope for a favorable outcome. You, Venerable Brothers, continue to implore the same with constant prayers to God. And since your minds are moved not by human desires and plans, but solely by a concern for divine glory and love for the Church, there is no doubt that, with the help of divine grace, you will receive a reward worthy of your constancy. And since in all matters, a great force has always resided in the union of minds and mutual charity, let nothing be more important to you than to safeguard the sacred bond of charity among yourselves with all diligence. In this matter, we also wish to remind you, Venerable Brothers; that the disturbances to which you are subject are such that they affect not only the particular concerns of individual Dioceses, but also the common interests of the entire Church; the care of which, as you know, has been entrusted to this Apostolic See, in which the supreme power of governing the Church, its supreme magistracy, and the center of Catholic unity are established. Therefore, let your eyes be constantly turned towards this Apostolic See, and consider that nothing is more important to you than to devote all your care and effort to ensure that the negotiations taking place in this region finally come to an end, as you and your representatives faithfully desire. Finally, imploring the Father of mercies from the depths of our heart, that He may regard your labors and sorrows, and grant a favorable response to our common prayers, we bestow upon you, Venerable Brothers, and upon the entire clergy and faithful of each of your dioceses, the Apostolic blessing, a testament of our special affection, and may the heavenly assistance and consolation be with you. Given at Rome, near St. Peter's, on the 6th of January, in the year 1886, in the eighth year of Our Pontificate. LEO PP. XIII.

[*Latin ed. p. 395*]

395 FROM 8. CONGREGATIONE CONCILII ADIACEN. OF THE LAWS OF ANDI, CONCERNING THE CARRYING AND ELEVATION OF THE CROSS. September 12, 1885. Session 21, chapter 9; Session 25, paragraph 13. Concerning reforms. A SUMMARY OF FACTS. There are two parishes in the city of Bastia, of which one, and it is the older, is located in the church of Saint Mary Major, which formerly was also the cathedral of the Diocese of Mariana; the other is located in the church of Saint John the Baptist, which was established in the year 1617 through the division of the old parish of

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Saint Mary. It appears certain that the parishioners of Saint Mary, even after the suppression that occurred in the year 1801, continued to hold their processions and collect alms throughout the city, and therefore also in the parish of Saint John. However, because of disagreements that arose among the faithful concerning these processions and collections of alms, Bishop Sebastiani, desiring to put an end to these difficulties, decreed in the year 1830 that each parish should only collect alms and hold processions within its own boundaries, until such disagreements persisted. However, this decree does not appear to have been issued absolutely, but conditionally; namely, for the case in which peace and harmony could not be established between the parishes and the faithful. The peace and harmony that were desired by the Bishop were preserved; and furthermore, in order that these might be established more and more between the two parishes, the respective pastors, as well as the administrators of the fabric of each church, entered into a certain agreement before the local syndic on the 6th of June of the same year, 1830.

[*Latin ed. p. 396*]

396. GENERAL AFFAIRS. The matters were arranged in this manner, proceeding more or less peacefully until the year 1883, when peace was again disturbed. In truth, the pastor of St. John, bearing with great displeasure that the confraternity of St. Mary of Mount Carmel, which had existed since ancient times in the parish of St. Mary, was seeking funds within the parish of St. John, in which another confraternity under the same invocation had been established since 1859, vehemently reproached the pastor of St. Mary and, after various vicissitudes, brought the matter before the judgment of the Apostolic See.

A SYNOPTIC ACCOUNT OF THE ARGUMENTS PRESENTED BY THE PASTOR OF ST. JOHN. This pastor maintains that no right belongs to the pastor to allow confraternities, or to administrators seeking funds within the boundaries of the parish of St. John; for this, he says, requires, in cases where they are entirely absent, either Apostolic letters or the faculties of the Ordinary, according to the Fourth Lateran Council, chapter 62, and Clement V in the Council of Vienne, canon 2. Indeed, Clement V states: "According to the statutes of the general council, we have decreed that no collectors [of alms] whatsoever be admitted or permitted, unless they present Apostolic or diocesan letters." However, the right of confraternities to collect alms, according to their own statutes, even those approved by the Holy See, is to be understood according to the manner prescribed by the Ordinaries; for to them also is forbidden the exercise of this right without the license of the bishop, according to the Constitution of Clement VIII, § 8, as Bassius states in his *Tractatus de Societatibus*, question 7, numbers 1 and 2. Therefore, it is the duty of the pastors to be vigilant and to demand letters from the Bishop or the Pontiff from all collectors, in general, before

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allowing them to collect within the boundaries of their parish; Bassius, *loc. cit.* Furthermore, he adds that if the situation were different, the parish of St. Mary would be granted the right to invade the parish of another and, in a certain sense, to administer the goods of that parish, which is contrary to law. In the words of Laurentius: "In a parish..."

[*Latin ed. p. 397*]

(ADJACEN. 397, c. 3, q. 160) "Quod habet territorium suum separatum et divisum, non est licitum alteri paroeciae aliquid facere," et addit Barbosa, *Iuris Ecclesiastici Universalis*, lib. 1, c. 20, n. 14, "dicitur iurisdictio distincta." Parochus enim legitimus consideratur administrator omnium eleemosynarum et oblationum quas fideles suae paroeciae offerunt, sicut patet ex cap. *Dilectus de capellis*, et traditur in *Ferrariensis Confraternitatis*, 14 Septembris 1872, §. ad secundum, et a S. O. Episcopus et Regul. in Neapolitana, iuris administrandi oblationes, die 3 Maii 1872, confirmata die 2 Iulii 1874, addit a clausula "et amplius." Tales normas iuris ad praxim translatas sunt, addit ius Gallicanum, ex quo colligitur aequum esse, ut limites quaestuarium singulis paroeciis assignatos in Gallia non praetergantur. Nam, ait patronus, quaestuae videntur esse loco redituum et proventuum Ecclesiae fabricae assignatorum, et ideo nemini ius esse eas colligendi intra territorium alterius paroeciae. Praeterea, et his omissis, valde contendit esse necessarium quod Decretum Episcopi, cui ius est stabiliendi modum et formam in eleemosynis colligendis ex Constitutione Clementis VIII. Hic enim statuit eleemosynas esse colligendas intra limites cuique paroeciae assignatos, non obstantibus consuetudinibus immemorabilibus in contrarium. Potuisse vero consuetudines etiam immemorabiles abolere, ex eo deducit, quod hoc fecit inhaerens Constitutioni Clementis V de poenitentia et remissione, c. 2, in VI, ubi "omnia et singula privilegia, si quae super praemissis (quaestuis) vel eorum aliqua sint aliquibus locis, ordinibus vel personis quaestorum quomodocumque concessa (ne ipsorum praetextu sit eis materia, talia ulterius praesumendi), auctoritate Apostolica quatenus ad praemissa penitus revocantes." Unde colligitur, ceu tradit Bassius, loc. cit., quaest. 7, nullam dari posse quasi possessionem quaestuandi nisi "pro arbitrio, prudentia et pastorali sollicitudine Episcopi et de eius consensu atque auctoritate... pro conservatione."

[*Latin ed. p. 398*]

398. ADIAGEN. He states that everything up to this point is confirmed, based on the agreement or contract initiated on June 6, 1830, between the pastors of both parishes. For in article 3 of that same contract, it is stated that the pastor and the council of the parish of Saint John declare that two collections should be held each year within the limits of this parish, for the benefit of the parish of Saint Mary. While this exception strengthens the rule, he concludes that it further demonstrates that it is in no way the

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right of the pastor, the administrators of the parish, or the confraternities of Saint Mary to collect alms within the territory of the parish of Saint John. Regarding another question, he observes above all that the pastor, according to *Cap. Dilectus fil. de Cap. Non. cap. 2*, has a prerogative, and with regard to all, a legally founded intention concerning the administration of the sacraments and sacramentals, and the exercise of all parochial rights, not only within the parochial church, but also within the limits of the entire parish. Therefore, in processions in which the pastor, as such, participates, he must precede all others, and exercise all acts of jurisdiction, as has been repeatedly decided by the Holy Congregation of Rites in Aversa on September 15, 1640. - Novarien, September 21, 1861. Indeed, he adds, the precedence of honor and jurisdiction belongs to the pastor, even if the chapter of the cathedral is present. Certainly, says Amostazo in *De causis piis*, book 6, chapter 2, at the end: "If the body is buried in the parochial church, the pastor must perform the funeral rites, even if the chapter of the cathedral church with its dignitaries is present, because that right belongs to him, even in the presence of the chapter of the cathedral church, as judged by the Holy Congregation in Paris on December 20, 1603, and on November 18, 1606. The reason is given by Cardinal De Luca in *lib. 13 de prooem*, discussion 21, number s. - there: "For to them (the pastors) applies the general rule, that in the funerals of their parishioners, as in an act in which they have and exercise jurisdiction, they must precede all others who do not serve in a jurisdictional capacity, as in their own parish, in which..."

[*Latin ed. p. 399*]

ADJACENCY 399: "The parish priest precedes all, even those who are more distinguished or hold a higher rank or office." From these statements, it must necessarily be concluded, says the author, that the parish priest of Saint Mary, invited with his clergy to funerals in the parish of Saint John, cannot raise his own cross. For it has been decreed on several occasions by the Holy Ritual Congregation, on September 30, 1614, and on November 22, 1631, and by the Sacred Council of Trent on January 17, 1682, that "the cross must be that of the church to which the funeral procession is directed, and it must be carried by the clergy of that same church." (Cited in Pignatelli, volume 8, consultation 83, number 175; Amostazo, book 6, chapter 2, number 22.) This same point can also be gathered from what the Roman Ritual states on page 157, namely that "the parish priest should proceed, with a cleric carrying the cross, and two others should follow, also carrying the cross." From this, Cardinal [number] 4468, in Alatri, observes: "There are so many decrees in this collection that declare and order that only one cross should be raised at funerals, that of the burying church, that if I were to attempt to demonstrate this, I would burden myself with a useless and reprehensible labor." Therefore, since the parish priest of Saint Mary, along

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with his clergy, is invited to attend funerals in the parish of Saint John, and cannot raise his own cross according to the aforementioned statements, it is necessary that he walk beneath the parish cross of Saint John, where the burial takes place. This point should be held more strongly, because when the parish priest of Saint Mary is invited to funerals in that parish, he does not constitute a community; rather, he is composed of a few priests who serve or reside within the boundaries of the church of Saint Mary, and he represents only a small portion of the clergy of Saint John. Furthermore, regarding the wearing of the stole, it is observed that the parish priest of Saint Mary cannot wear the stole in that parish, because the wearing of the stole pertains only to the priest who administers the sacraments and sacramentals, and those things that are necessarily connected with them. Moreover, according to the Council of Trent, session 24, chapter 13, on reform, the wearing of the stole pertains only to the parish priest regarding the sacraments and sacramentals.

[*Latin ed. p. 400*]

400. ADMINISTRATION. It is stated in Canon 1 that the office of the funeral is to be included among the sacraments; the Doctors teach this; Hostien, *Summa*, title 3, on burials, number 5, *in fine*. Regarding this matter, it is the duty of the parish priest alone to carry the stole in the funeral procession, as a sign of his parochial office and jurisdiction, as is held by the Most Holy Congregation in *Manutentiones super delatione stolae* of June 22, 1814, §. MERITO. WHAT IS DUE TO THE PARISH PRIEST OF SAINT MARY. On the other hand, it must be carefully noted that the confraternities established in the parish of Saint Mary have full right to collect alms even within the boundaries of the parish of Saint John. This, indeed, seems easily demonstrable from the fact that, from times of antiquity, exceeding the memory of men, until the present day, such confraternities have continuously collected alms in the aforementioned parish of Saint John, which is admitted by all with one voice, and will become even clearer below. Indeed, it is established in law that he who possesses an immemorial custom can allege any better title of right, as Fagnanus teaches in Chapter "Cum Apostolica," number 6; therefore, he can also allege any privilege, or a special apostolic indult with derogations; De Luca in *Miscellaneae Ecclesiasticae Disputationes*, 31, number 4; Fagnanus in Chapter "Cum contingat de foro compet," number 6. Let it not be said, as the parish priest of Saint John asserts, that this immemorial custom has been destroyed by the decree of Bishop Sebastian. For, even if it were asked whether the Bishop could have invalidated this custom, it must be remembered that the Bishop's decree was given only conditionally; namely, for the case in which the desired union should not take place. Since, therefore, concord and union have taken place, the condition has failed, and it is well known that when the condition fails, the conditional also fails; therefore,

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the aforementioned decree could not have any effect.

[*Latin ed. p. 401*]

401. It seems much less likely that the aforementioned custom was overturned by a meeting of the parish priests. For, if this agreement or convention took place only between two parish priests and the administrators of the buildings of both churches, it naturally follows that this convention, as if made between others, could in no way affect or prejudice the rights acquired by the confraternities through immemorial custom, which were not invited; *Rota* Dec. 1316, n. 8, *cor.* Molina. And this is even more so in this case, because in the decree of the Sacred Congregation of Rites, *Urbis et Orbis*, of December 10, 1703, regarding question 28, it is expressly prohibited that the parish priests should interfere with the offerings and alms of the confraternities. However, what seems to be of utmost importance in this matter is that, notwithstanding the decree and the convention, the confraternity of Saint Mary has continuously, from the year 1830 to the present day, without any interruption, maintained its custom of collecting alms even in the parish of Saint John, as is proven by various testimonies. Therefore, it seems perfectly justifiable to conclude that the aforementioned convention did not in any way affect the collections of the confraternities, but only those which are strictly parochial, as is the nature of the convention, and that the collections made within it are also reserved, and that the observance of this is required; *Rota* Dec. 1003, n. 16, *cor.* Molines. Moreover, it is certainly true that the decree and the convention have not at all changed anything in this matter, since the same is as if nothing had been done or nothing had been accomplished; *Rota* Dec. 252, n. 12, part 13; Dec. 227, n. 8, part 18; *Rec.* Achilles de Grassis, Dec. 5, *de praescript.* Gonzalez, *ad regul.* 8, *Cancel, gloss.* 55, n. 22. Therefore, the immemorial custom remains fully and intact as a right of the confraternity of Saint Mary. Furthermore, the aforementioned custom is not found to be precisely contrary to the law; indeed, although the Council of Trent, in Chapter 9 of Session 21, *de Reformatione*, abolished the corrupt collectors of alms, it never forbade almsgiving itself.

[*Latin ed. p. 402*]

402. ADJACENT. Synagogues or messengers, like receivers, who, without fraud, spontaneously receive and collect alms intended for pious purposes, as Galet reports in the "Margarita Casuum Conscientiae" under the word "elemosyna"; and this has been declared by the Sacred Congregation of the Council of Trent, as Bonae states, "Disp. 292, pt. 3, no. 9; Fagnan, in Cap. Cum ea) regarding Penance and Remission, no. 31; Barbosa, "De Officio et Potestate Episcopi," pt. 3, allegation 109, no. 5. - Hence, it is expressly clear that confraternities also have the right to collect, as is evident from the celebrated Constitution of Clement VIII, dated December 17, 1604, which

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begins "Quacumque diei" - therein - "To these ministers and officials (of the confraternities) and others mentioned, the power is granted to receive alms and other offerings of Christian charity, according to the manner and form prescribed by the Ordinary of the place." Thus, only the manner is left to the discretion of the Bishop, which, however, must be regulated according to the terms of privileges, or by custom, or by the nature of the places or works, as De Luca teaches in "Annotationes ad Sacrum Concilium Tridentinum," discussion 18, no. 4. Indeed, in the matter of the forty-year custom, there is no doubt that, as noted above, the confraternities of Saint Mary, and especially that of Saint Mary of Mount Carmel, from the year 1830 until the present day, for a period of 53 years, have continuously exercised their right to collect in the parish of Saint John, without any interruption. It is clear that the consent of authority has not been lacking; because four Bishops have not opposed the custom known to them. Furthermore, the objections of the pastors of Saint John cannot present any difficulty, since they offer nothing more than extrajudicial requests, from which neither bad faith can be inferred, nor can any prescription be said to have been interrupted, as Surd. states, "Dec. 5, no. 7; Scarfant, "Ad Ceccop.," pt. 2, dec. 9, nos. 46 and 47. After these things, it is easily seen that the confraternities of Saint Mary must be maintained in their possession; and this all the more so because any innovation in this matter would cause scandal and dissension, as testified by the pastor of Saint Mary, as well as by the Bishop himself.

[*Latin ed. p. 403*]

ADJACENCY 403. For it cannot be said that the confraternities of Saint Mary harm the rights of the confraternities of Saint John. Since it could be observed that the confraternities of Saint John were erected under the same invocation as those of Saint Mary, they are null and void. Indeed, Clement VIII, in the aforementioned Constitution which provides a canonical form for all such sodalities in a uniform and constant manner, especially decreed that only one confraternity of the same kind may be established or formed in each city, town, and place; and all erections made contrary to this precept are declared null and void. This was also clearly stated by Paul V in the Constitution, as explained by Leo Thesinus in *Fori eccl.*, p. 4, c. 2, n. 103 and 104; by Ferraris in *V. Confraternitas*, art. 1, n. 19; and by Lucidi in *Visitat. SS. LL.*, part 1, vol. 2, p. 441, n. 122 and 126, where, with specific decisions cited, only the sodalities of the Most Holy Sacrament and of Christian doctrine are excluded from this constant rule. Furthermore, the Sacred Congregation of Councils has always maintained this rule, as is evident from the document concerning the erection of a confraternity of Uretislava, dated December 3, 1729, and from the document concerning the suppression of a confraternity of Syracuse, dated 1873 (1). Therefore, since the confraternities of Saint Mary, and especially that of Saint Mary

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of Mount Carmel, existed at the time of the erection of the confraternities of Saint John, it follows that these latter are null and void, as stated by Bassius in *De Sodalitiis*, quaest. 3; and by Pigliateli in *Consult. Can.*, tom. 4, cons. 17. They are therefore entitled to enjoy full rights, even to the right of collecting alms in the parish of Saint John, as if it were their own territory. Moreover, even if the legitimate existence of the confraternities of Saint John is admitted, it seems certain that the confraternities of Saint Mary, being older, should enjoy greater privileges, similar to those held by creditors, according to the rule that priority in time confers greater right: De Luca, *De Regul.*, disc. 19, and *De Praemin.*, disc. 24 and 25, ibid., n. 13; and that they should suffer no prejudice from the sodalities of Saint John of the same invocation (1).

[*Latin ed. p. 404*]

404 ADJACIO. [Ajaccio] can possess, by right, that which they have enjoyed from time immemorial, as De Luca teaches in Annotations to the Sacred Council of Trent, discourse 18, paragraph 4; in Miscellanea, ecclesiastical discourse 31 and 32; on Regulations, discourse 28 and following. This concerns the right of confraternities to collect alms; now, concerning other collectors of alms. First of all, the parish priest of Saint Mary notes that he and the parish, as such, have never collected alms in the parish of Saint John after the decree of Bishop Sebastian, except for those alms only permitted to be collected in the convent, which are publicly collected with the participation of the priests of Saint Mary. He states that this is done without fraud, and that abuses have never occurred; indeed, he recounts that this custom arose both because of the poverty of the parish of Saint Mary, which at the beginning of this century was also a cathedral and the principal church of the entire city; and also because of the great veneration of the faithful towards this ancient church. Furthermore, he observes that the custom of collecting alms for charitable and pious works, without any special permission, is common in the neighboring diocese. Indeed, it is not forbidden to collect alms for the needs of pious places, as Fagnanus teaches in Chapter "Concerning Penance and Remission," paragraph 31, where he states that this has been decided by the Holy Office, and it seems rightly concluded that it is not in any way forbidden for such collectors of Saint Mary to collect alms, even outside their own parish. For those to whom the right to collect alms is forbidden are those who, going from house to house, from chest to chest, indulge in wine and give scandal to all the faithful, as an example exists in Arimino. The right to collect alms, decided by the Sacred Congregation of the Council on February 25, 1826: but none of these things apply to this case. Nor does it appear that the permission of the Ordinary is required in this case, because such collections are made privately, without noise, by private individuals, and this custom is accepted throughout the diocese; Pissavinus, On Curates, Chapter 2, number 29. As for the second

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doubt, it is necessary to remember...

[*Latin ed. p. 405*]

Adjacent to [section] 405, which states that, according to the general rule, only the parish cross should be carried at funerals and processions, Pigliateli teaches that this rule can be modified by local custom. *Consilia*, 6, consultation 58, number 15; where it is stated that this was also declared by the Sacred Congregation of Rites in Camerino, on November 21, 1637, in response to four questions, and this decision is also cited by Gupino, volume 3, in *Decretum*, new edition, section *Sacra Congregatio*, indeed, it is established that in similar matters, custom, especially one that is immemorial, cannot be removed in any way by the ceremonial, as the Sacred Congregation of Rites has declared repeatedly, as cited by Barbosa, *De Canon et Dignitatibus*, chapter 33, number 24, and in *Summa Apostolica*, collection 78, numbers 5 and 6; but also, where this custom prevails, as many crosses can be raised as there are parishes, or communities, as is reported by Cavalieri in *Agenda Defunctorum*, chapter 15, decree 41, number 2, from the decree of the Sacred Congregation of Rites of December 20, 1708, as cited by Pitonio; Ferraris, *De Cruce*, number 37; and this has been affirmed repeatedly by the Sacred Congregation of the Council, especially in the recent Papal Bull *Praecedentiae et Iuris* of August 14, 1850. Furthermore, it is established that this custom prevails in the city of Bastia, both from the fact that the parish priest of Saint John protested against this custom, and from other testimonies presented by the parish priest of Saint Mary, and finally, from the fact that the parish priest of Saint Mary reported the unusual custom of carrying a stole. Therefore, it seems that the parish priest of Saint Mary can raise the cross when he participates with his clergy in public processions, and this all the more so because the church of Saint Mary is older and more distinguished, as stated by De Luca, *De Regulamine*, discourse 19, on Preeminence, discourses 24 and 25; but also because the church of Saint Mary is the mother church of another church, Saint John. For, as De Luca states in *De Regulamine*, discourse 19, number 23, when one proceeds under the cross of another, it denotes subjection; therefore, it seems improper and irrational that the daughter should precede the mother; De Luca, *De Praeeminentiis*, discourse 3 and following, on Parodi, discourses 33 and 36; Sacred Congregation of the Council, in Senogallien, January 30, 1779. These considerations seem to apply with even greater force to the right of carrying the cross.

[*Latin ed. p. 406*]

406. ADJACENT. Regarding the stole. Since the stole, without its proper use, is not a primary sign of jurisdiction, but rather a priestly vestment (C. Ecclesiastica 23), and as D. Thomas teaches in *Summa Theologica*, 3, p. 9, supplement, article 7, that it is the proper habit of a priest, and is like

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the form of the entire priestly adornment. Therefore, when parish priests enter foreign territory, they use the stole, employing the habit granted to them, especially on the occasion of processions; Pignatelli, *Tomus* 3, consult. 48, no. 40. Hence, the Sacred Congregation of Rites has repeatedly decreed that the customs of the place must be observed in this matter, as in Veliterna, Archiconf. Sacr. Stygrnat. of St. Francis, March 27, 1824; in Portus Aloysius, May 9, 1859; sometimes it has even declared that it is fitting and appropriate, for the sake of distinction, as in Veliterna, December 16, 1846; and sometimes, to those requesting it, this privilege has been benignly granted, as in Todi, August 22, 1818. With these things noted, the following questions were proposed:

I. Can the confraternity of St. Mary of Carmel, and also other confraternities and the collectors of the parish of St. Mary, be able to collect alms within the limits of the parish of St. John?

II. Can the parish priest of St. Mary elevate the cross and wear the stole in public processions and funerals within the limits of another parish?

RESOLUTION. The Holy Office, having knowledge of the matter, considered it best to respond: "The custom prevailing in the place must be observed, and it is the opinion that the Bishop should be written to, so that if further difficulties arise, he may induce the parish priest of St. John to remove them through amicable agreement between the two parish priests."

FROM WHICH, ONE MAY GATHER: Whoever has a custom in their favor can allege it as a better title than any worldly one; that is, they can allege in their favor any privilege or special apostolic title, with derogatory clauses.

[*Latin ed. p. 407*]

ADJACENCY. 407 II. It is customary in this matter to require a provision by which the confraternity of the Most Holy Mary and other confraternities may operate within the boundaries of the parish of Saint John; and by which the parish priest of Saint Mary may raise the Cross and carry the vestments in common and funeral processions within the boundaries of another parish. III. By law, it is permitted to the ministers and officials of confraternities to receive offerings of Christian charity, according to the manner and form prescribed by the Ordinary of the place.

SUMMARY OF DONATIONS.

•P Lie, August 22, 1885. Here is a summary of the donations.

COMPENDIUM OF THE CASE.

Theresia, from the diocese of Melelitana, presented herself to the Most Reverend Father, stating that she had received from the foundation of

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Maria Bonanno a dowry for entering into marriage; however, she detests marriage on account of her advanced age. Regarding this matter, she humbly requested that, due to her extreme poverty, she be granted the benefit of this legacy, even if she remains unmarried. The Ordinary, having testified to the truth of the petitioner's statement, and having shown every favor to the petitioner, went further, hoping that what the petitioner requested as a favor might be established as a rule for similar cases, which frequently occur in the diocese of Melelitana.

SYNOPTIC DISCUSSION: THE GRANT OF THE GRACE SEEMS DENIED.

Indeed, since a dowry is not conceived without marriage, as the Sacred Roman Rota in decision 1168, number 6, before Molines, expressly states, and it is clearly established that this [dowry] is intended only for unmarried girls, it is evident that the legacy of the dowry, which the petitioner wishes to enjoy, was granted only by way of a condition by the testatrix Bonanno. It remains for the time of marriage, and thus, by its very nature.

[*Latin ed. p. 408*]

408. The *Melevitan* law is entirely uncertain and always remains conditional; Sacred Roman Rota, decision 211, number 5, part 18, volume 1, recent. Therefore, everyone sees that the legacy is not due unless it follows from the marriage. Indeed, in law, a legacy bequeathed under a condition can only be claimed when it is established that the condition was most certainly fulfilled by the legatee, as stated by Amostazo in *De Causis Piis*, book 4, chapter 6, number 12, and by Mantica in *De Coniecturis*, book 11, title 18. Sacred Roman Rota, decision 211, number 5, paragraph 18, volume 1, recent. In fact, there is a custom prevailing in the diocese of *Lucca*, namely, that the dowry is not paid unless the marriage actually takes place. Furthermore, if the petitioner's request were to be extended according to the opinion of the Ordinary, the points mentioned above would be more forcefully argued, since the dowries of young women concern the public good, as stated by Cardinal De Luca in *De Dotibus*, discussion 17, number 2, by Amostazo in *De Causis Piis*, book 1, chapter 2, number 6, and book 4, chapter 6, number 1, and by the Sacred Roman Rota before Cavaler, decision 27, number 4. Indeed, the reason and purpose of the legators, namely, to provide for the honorable status of young women, would seem to be completely overturned, and a considerable scandal might arise among the faithful, who, seeing the intentions of pious founders so easily changed, might refrain from establishing similar legacies in the future.

GRACE TO BE GRANTED SEEMS [POSSIBLE]. However, it should be considered that such legacies were perhaps left with the title and purpose of charity, rather than under an absolute condition of marriage. And this

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may be deduced from the fact that only girls who are related to the founders by blood have the right to these legacies. Furthermore, with this argument of affection supporting it, it might not be foreign to the presumed intention of the pious founders that dowries be granted to girls, even if they do not enter into a marital state, or if they prefer to follow the counsel of the Apostles in 1 Corinthians, chapter 7, and to serve the Lord more fervently in the state of celibacy. And from this, a considerable benefit to public morals would seem to arise, since, according to the Ordinary, an end would finally be put to a frequent abuse.

[*Latin ed. p. 409*]

MELEVITANA 409. Furthermore, if the Ordinary deemed the dispensation in the Lord not to be expedient, it would seem advisable to consult with the supplicant, considering the particular circumstances in which she finds herself. For she is burdened by poverty and her days are already advanced. With these premises, the question was raised as to how the prayers should be handled. RESOLUTION. The Sacred Congregation of Religious, having knowledge of the matter, on August 22, 1885, decided to respond: "Affirmatively, with the favor of the supplicant only, with the consent of the administrator of the pious endowment, having given word to the Most Reverend OLINDEN. VENIAE AD MATRIMONIUM (Dispensation from Matrimony). On August 22, 1885. Through summary prayers. After a second petition, the S. C. C. resolved, by apostolic indult of December 1883, to grant a dispensation from the marriage begun between Alexander and Mathilde, which had remained valid, as it appeared, due to the impotence of the man. However, the dispensation was granted with the usual clause: "provided that the man is forbidden from entering into other marriages without the consent of the Sacred Congregation." (1) Now, Alexander, desiring to enter into a new marriage, again turned to the S. C. C., requesting permission to marry, and presenting in his favor the testimony of two physicians, skilled in their art, whom the Bishop himself designated, who, under oath, testified that they had been "made certain, after an examination, that Alexander, being thirty-six years of age, is a man with well-formed organs, and fit not only for contracting marriage, but also for procreating offspring." COMPENDIUM FACTI (Summary of the Case). (1) A synopsis of this case is found in Volume XVI, page 215.

[*Latin ed. p. 410*]

410. OPINION. The Bishop himself favors the petitioner, stating: "I pray and beseech the Holy Office to favorably consider the petitioner's request, so that, freed from this impediment, he may be able to enter into marriage, and thus provide for his eternal salvation. For the petitioner, being afflicted by the vice of incontinence, has strayed onto the path of perdition; and from this he can only escape through the sacrament of marriage, which

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he earnestly desires."

A concise summary: It has been noted that the Holy Office frequently grants permission for marriage when two experts in the medical art testify to the petitioner's suitability for the duties of marriage, as in Leopoldina, on December 14, 1878; and in Naples, on September 4, 1875, through summary petitions.

The only difficulty in this case is that no testimony is presented regarding any care to which the man may have subjected himself, in order to cure the defect from which he suffers; this is ordinarily required, unless sufficient time has elapsed for the defect to be remedied, and unless the Holy Office wishes to rely solely on the testimony of experts regarding the petitioner's sound health, as appears to have been the case in Tornaco. Regarding permissions, etc., July 17, 1882.

With these few preliminary remarks, the question was raised as to how the petitioner's requests should be addressed.

RESOLUTION. The Holy Office, having considered the matter, responded on August 22, 1875: Affirmative, but only for the *vidua* (widow).

(1) You have this question in Vol. XI, page 593, and on page 595 of the same volume. Recall what we noted in the footnote.

[*Latin ed. p. 411*]

411 FROM A DECREE OF THE HOLY CONGREGATION, by which an Indulgence of one hundred days is granted to the faithful who use a special formula of Right Intention. Most Blessed Father: In these times of such great wickedness, in which impiety finds favor, and religion suffers hostility, it certainly offers great comfort to see the daily increase of devotion towards the Most Holy Heart of Jesus Christ, and its spread among every group of the faithful, among whom many, elevated by a desire for singular perfection, strive to live solely for the honor and glory of the Divine Heart, in order to repay, in some way, for the countless sins of so many wicked men and the bitterness of ungrateful souls. Indeed, among other pious practices, one that is more common and promotes devotion to the Most Holy Heart of Jesus is the daily offering, to be performed each morning, of all the actions to be performed during the day to the same Most Holy Heart of Jesus, who, in the Sacrament of the Altar, becomes our food, our strength, and our companion; nay, our victim in this very Sacrament, is offered and profaned. Now, many faithful, desiring greatly to have a prayer formula by which they can express, with all the outpouring of their soul, said daily offering to the Most Holy Heart of Jesus, such a formula has been prepared, as is set forth in this humble booklet. In order that this so salutary practice may spread more widely among the faithful, Henry Vasco, of the Society of Jesus, humbly prostrates himself before Your Holiness and earnestly

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requests that you deign to grant some Indulgence to the faithful who use the aforementioned formula with right intention. And so, the formula of right intention: O Lord Jesus Christ, in union with that divine intention with which You Yourself, through Your most holy Heart, gave praise to God on earth, and now continually in the Most Holy Sacrament of the Eucharist, where You give praise to all the world until the consummation of the ages, through this, through this entire day, with no smallest part excepted, for the imitation of the Most Sacred Heart of the Blessed Virgin Mary, ever Virgin, Immaculate, I offer to You...

[*Latin ed. p. 412*]

412 From the Sacred Congregation for Indulgences, I offer all my intentions and thoughts, all my affections and desires, all my works and words. His Most Holy Lordship, Pope Leo XIII, in an audience held on December 19, 1885, by the undersigned Secretary of the aforementioned Sacred Congregation for Indulgences and Sacred Relics, benignly granted an Indulgence of one hundred days, to be gained once a day by all the Christian faithful of both sexes, who, at least with a contrite heart, devoutly recite the exhibited prayer. This [Indulgence] is valid forever, without any brief being required. Contrary decrees notwithstanding.' Given from the Secretariat of the same Sacred Congregation on December 19, 1885. I. B. CARD. FRANZELIN, Prefect. FRANCISCUS URBIS ET DELLA VOLPE, Secretary. Regarding the making of confessions each week in order to obtain Plenary Indulgences. In response to questions proposed by the Reverend Doctor, Bishop of Leuca, and the Vicarius Capitularis of Cento, concerning the sacramental Confession, which is necessary to obtain Plenary Indulgences within a week, or two consecutive weeks, namely: I. Whether the Confession prescribed each week must be performed within seven, or rather, within eight days? II. Whether the words "within two weeks" are to be interpreted strictly, so that the Confession must be performed within fourteen days, or rather, is it sufficient to have two Confessions in the month? The Sacred Congregation for Indulgences and Sacred Relics responded on November 23, 1878: To 1, Affirmative to the first part, that is, the prescribed Confession must be performed at any interval of seven days; Negative to the second part. - To 2, Affirmative to the first part, that is, the prescribed Confession must be performed at any interval of fourteen days; Negative to the second part. (1) For a clearer explanation of this matter, the following is asked: I. Whether a Christian faithful person, who is accustomed to performing Confession every week and on a fixed day, for example, on Saturday, fulfills the obligation of the prescribed Confession? II. Whether the obligation of the prescribed Confession is fulfilled by a Christian faithful person [who does so]. This

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response was reported in Volume X I, page 358.

[*Latin ed. p. 413*]

FROM THE SACRED CONGREGATION FOR INDULGENCES 413: Is it permissible for those who, in places where the Indulgence is in effect, are accustomed to making their Confession on alternate weeks and on holy days, for example, on the Sabbath? The Sacred Congregation for Indulgences and Sacred Relics, having considered the above-mentioned questions, responded on February 25, 1886, as follows: To question 1: Affirmative. To question 2: Affirmative. Given in Rome, from the Secretariat of the same Sacred Congregation, on February 25, 1886. I. B. CARDINAL FRANZELIN, Prefect. FRANCIS DELLA VOLPE, Secretary.

ORAN: Concerning the formula to be used for general absolutions and for blessings with a plenary Indulgence. The Prefect of the Chapter and the General Vicar of the Diocese of Oran addressed the Sacred Congregation for Indulgences and Sacred Relics, stating that a pious Society of Sisters, called the Most Holy Trinity, which, as a Congregation of simple vows, was approved by a decree of the Sacred Congregation of Bishops and Regular Canons on September 22, 1869, possesses numerous houses in the Diocese of Oran; that the same Society, which is under the governance of a General Superior, residing in Valencia in Gallia, was aggregated to the Order of the Discalced Fathers of the Most Holy Trinity on October 15, 1867; that, by virtue of this aggregation, the Sisters are to receive nine times a year either a General Absolution or a blessing with a plenary Indulgence; but that there is a disagreement regarding the formula that should be used in administering these. Following the publication of the Apostolic Letters in the form of a Brief on July 7, 1882, which begin: "Quo universi," the Sacred Congregation inquired: Which formula should be used in this case? In a plenary session held in the Vatican on December 18, 1885, the Most Reverend and Illustrious Cardinals responded: The formula to be used is the second one, namely, the one that begins: "Intret oratio mea in conspectu tuo, etc." His Holiness Pope Leo XIII, in an audience held on the following day with the undersigned Secretary, approved the response of the Most Reverend Fathers. Given in Rome, from the Secretariat of the same Sacred Congregation, on December 19, 1885. I. B. CARDINAL FRANZELIN, Prefect. FRANCIS DELLA VOLPE, Secretary.

[*Latin ed. p. 414*]

414 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, CONCERNING INDULGENCES: Regarding the Apostolic Blessing with a plenary indulgence attached, to be given at the point of death. The Most Reverend Prefect, charged with propagating the Christian name, and who presides over this Sacred Congregation concerning Indulgences and Sacred Relics, reported that in several

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regions subject to the Sacred Congregation for the Propagation of the Faith, a practice had arisen, which needed to be corrected due to a lack of priests, namely, that when these priests are unable to attend to the sick until the very point of death, they are prevented from granting the Apostolic Blessing with a plenary indulgence at the point of death, after the administration of the Sacraments, even though the danger of death is present, but not imminent. Since this method of acting caused anxieties and doubts in the minds of the Missionaries, the Most Reverend Prefect requested an authentic declaration from this Holy Congregation on this matter, which would remove any uncertainty for the greater peace of the Missionaries. Therefore, the following question was proposed to the Cardinals for resolution: Whether the Apostolic Blessing with a plenary indulgence at the point of death can be given after the administration of the Sacraments, when the danger of death is present, but not imminent. The Eminent and Reverend Fathers, in a general Congregation held on December 18, 1885, in the Vatican, answered: Affirmative: and they declared that this response is valid for all sick Christians in danger of death, by reason of the nature of the matter. After a report was made on these matters in an audience held on the following day, by the undersigned Secretary, the Most Holy Father, Pope Leo XIII, approved the response of the Cardinals. Given in Rome, from the Secretariat of the same Sacred Congregation, on December 19, 1885. I. B. CARDINAL FRANZELIN, Prefect. FRANCISCUS DELLA VOLPE, Secretary.

[*Latin ed. p. 415*]

415 FROM 8. CONGREGATION OF RITES, BRESIA. Concerning the Beatification and Canonization of the Venerable Servant of God, Alexander Luciaghi, a Patrician from Brescia. At the request of the Reverend Father John Anthony Scaramucci, Prefect of the Congregation of the Oratory in Rome, and Promoter of the Cause of Beatification and Canonization of the aforementioned Venerable Servant of God, Alexander Luciaghi, the Most Holy Pope Leo XIII, through a Decree of the Congregation of Rites dated August 30, 1883, graciously granted that in the Congregation of Rites, in an Ordinary session, the validity of the processes – both those conducted under Ordinary and Apostolic authority – concerning the construction of the cause of the same Venerable Servant of God, might be examined, without the intervention or vote of the Consultors. Without delay, the Reverend and Most Reverend Cardinal Lucidus Maria Parocchi, Promoter of this Cause, in a special session of the aforementioned Sacred Congregation, according to the particular prescriptions issued by the same Most Holy Pope Leo XIII on November 20, 1878, and having convened a meeting at the Vatican on the aforementioned date, proposed the following question for discussion: "Whether it is established that the processes, both those conducted under Apostolic and Ordinary authority, are valid; whether the witnesses were

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duly and properly examined, and whether the testimonies produced were legitimately obtained, in the case and for the purpose in question." Furthermore, the Sacred Congregation, after mature deliberation, and having heard the opinion, both orally and in writing, of the Reverend Father, Dom Augustine Caprara, Promoter of the Holy Faith, declared and affirmed: "Affirmatively, or It is Established." December 15, 1885. Subsequently, a faithful report of these matters was made to the Most Holy Pope Leo XIII by the undersigned Secretary. His Holiness accepted and confirmed the judgment of the Sacred Congregation on the 17th day of the same month and year.

D. CARDINAL BARTOLINIUS, S. R. C., Prefect.

L. gg S. LAURENTIUS SALVATI, S. R. C., Secretary.

[*Latin ed. p. 416*]

416 FROM 8. CONG. S. R. U. INQUISITIONIS: CIRCULAR LETTERS to the ordinaries of the places, containing an authentic declaration regarding those who compel lay judges to bring ecclesiastical persons before their tribunal, in accordance with the Apostolic See's moderation, in the Constitution of Pope Pius IX, of blessed memory, which begins "Apostolicae Sedis moderationi," on the 4th of October, 1869, it is stated that excommunication, "reserved to the Roman Pontiff by special law," is incurred. Those who, either directly or indirectly, compel lay judges to bring ecclesiastical persons before their tribunal, contrary to canonical provisions; or who enact laws or decrees contrary to the freedom and rights of the Church. Since there has often been doubt regarding the true meaning and understanding of this passage, this Supreme Congregation of the Holy Roman and Universal Inquisition has declared, not once, that the passage "compelling" does not apply except to legislators and other authorities who, either directly or indirectly, compel lay judges to bring ecclesiastical persons before their tribunal, contrary to canonical provisions. This declaration was approved and confirmed by the Most Holy Pope Leo XIII; therefore, this Holy Congregation considered it fitting to communicate it to all the ordinaries of the places as a norm. Furthermore, in those places where the privilege of the forum has not been derogated by the Supreme Pontiffs, if it is not permitted to pursue legal rights except before lay judges, each individual is obliged to first request permission from his own ordinary so that clerics may be brought before the court in the manner of laypersons; and that ordinary will never deny such permission, especially if he himself has fruitlessly endeavored to reconcile the disputes between the parties. It is not permitted for bishops to be brought before this forum without the permission of the Apostolic See. And if anyone should dare to bring a person before a lay judge or judges, or a cleric, without the permission of the ordinary, or a bishop without the permission of the Holy See, it will be within the power of those same ordinaries to impose penalties and censures upon him, as

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upon a violator of the privilege of the forum, if they judge it expedient in the Lord. In the meantime, I pray that the Lord grant you many blessings and good things. Given in Rome, on the 23rd of January, in the year 1886. Your most devoted servant in the Lord, R. CARD. MONACO.

[*Latin ed. p. 417*]

417 Letters from His Holiness Pope Leo XIII to Prince Otto von Bismarck, Chancellor of the German Empire, announcing his appointment as a Knight of the Order of Christ. Now that the matter concerning the Caroline Islands has been resolved with the conditions that We proposed, We have taken care to communicate Our joy regarding this matter to the Most Serene German Emperor. But We also wish to declare these sentiments to You as well, most eminent Prince, who, in order that this controversy might be settled, was the author of Your own judgment and Your own initiative. Indeed, it is fitting to acknowledge that, if various difficulties, amidst the care of this business, were overcome, this was largely due to Your diligence and constancy, since You have aided Our efforts from beginning to end. Therefore, We testify to You Our gratitude, because the opportunity offered to Us through Your counsel is most opportune to carry out, for the sake of concord, a task of great nobility: not that it is a new thing among the affairs of the Holy See, but one that has long been desired: although there is scarcely anything that so perfectly agrees with the genius and nature of the Roman Pontificate. You, indeed, following Your own judgment freely, and considering the matter more from truth than from the opinion of others or custom, did not hesitate, but rather You trusted in Our justice. In this matter, You have been seen to have the support of men of incorruptible judgment, either openly or tacitly, throughout the Catholic world, whom, certainly, it was fitting to honor as belonging to Our family and flock. Your civil prudence has certainly been of great value in establishing the great magnitude of the German Empire, which is recognized and acknowledged by all: and it is fitting that, at this time, You consider how the Empire may stand and flourish daily more, strengthened by its resources and its power. But it does not escape Your wisdom how much virtue resides in the power that is exercised by Us for the safety of public order and civil affairs, especially if it is free to act, with all impediments removed. Therefore, it is permissible to foresee future things, and to draw hope from those things that have been accomplished. In the meantime, so that you may have a testimony from Us both of the fact and of Our will, We declare You, through these Letters, a Knight of the Order of Christ: the insignia of this dignity, along with these very Letters, We have ordered to be sent to You. Finally, We sincerely pray that all may be well with You. Given at Rome, near St. Peter, on the 31st of December, in the eighth year of Our Pontificate. LEO XIII.

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Aeta, Vol. XVIII, page 27.

[*Latin ed. p. 418*]

418 Letters from Prince Bismarck to Pope Leo XIII, in which he expresses gratitude for the honor received.

Sire, The gracious letter with which Your Holiness has honored me, as well as the high decoration that accompanied it, have caused me great joy, and I pray Your Holiness to deign to receive the expression of my profound gratitude. Any mark of approval pertaining to a work of peace to which it has been given to me to contribute, is all the more precious to me because of the great satisfaction it causes to His Majesty, my August Sovereign. Your Holiness said in Your letter that nothing is more in accordance with the spirit and nature of the Roman Pontificate than the practice of works of peace. It is by this very thought that I was guided in praying Your Holiness to accept the noble office of arbitrator in the dispute between Germany and Spain, and in proposing to the Spanish Government that we submit, on both sides, to the decision of Your Holiness. The consideration of the fact that the two Nations do not find themselves in an analogous situation with respect to the Church, which venerates in Your Holiness its supreme head, has never weakened my firm confidence in the lofty views of Your Holiness, who assured me – Berolini die 13 Ian. 1886.

Most humane Letters, Your Holiness, have caused me, beyond the great honor, a joy of the greatest magnitude. I desire to offer as a testament to this, the utmost gratitude. Since all commendation of a work of peace is referred to the highest, and that work, to which it has been my duty to contribute, is all the more precious to me because it is pleasing to my August Sovereign. Therefore, I pray that Your Holiness will deign to accept. Your Holiness said in Your letter that nothing is more in accordance with the spirit and nature of the Roman Pontificate than the practice of works of peace. This thought led me to implore Your Holiness, as a favor, to accept the noble office of arbitrator in the dispute between Germany and Spain, and to suggest to the Spanish Government that we submit, on both sides, to the decision of Your Holiness. The consideration that neither nation is in the same condition with respect to the Church, in whose head Your Holiness is venerated, has not diminished my firm hope in the wisdom of Your Holiness, which assures me that it will be just, and that it will be fulfilled.

[*Latin ed. p. 419*]

41. It is with the most just impartiality that I present My judgment. The relations between Germany and Spain are such by their very nature, that the peace which exists between these countries is threatened by no permanent divergence of their interests, nor by resentments arising from their past, nor by rivalries inherent in their geographical situation; their usual good relations could not be disturbed except by fortuitous causes or by

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certain misunderstandings. Therefore, there is every reason to hope that the peaceful action of Your Holiness will have lasting effects, and among these, I count first and foremost the grateful memory that both parties will retain for the august mediator.

Regarding what concerns me, I will always seize, and with eagerness, any opportunity that the fulfillment of my duties towards My Prince and towards My Fatherland will provide me, to testify to Your Holiness my lively gratitude and my most humble devotion. I am with the sentiment of the deepest respect, Sire.

Therefore, it is entirely fitting for me to hope that the peaceful action of Your Holiness will achieve stable results; among which, I place first the fact that both nations will cherish the memory of the august peacemaker eternally.

With the greatest reverence I profess My devotion to Your Holiness, O King.

Your most humble servant,

V. BISMARCK

To His Holiness Pope Leo XIII, servant of servants.

V. BISMARCK

To the Holiness of Pope Leo XIII.

[*Latin ed. p. 420*]

420 FROM S, DECREE OF THE CONGREGATION FOR RITES, "Concerning the Beatification or Declaration of Martyrdom" of the Venerable Servants of God, Father Emmanuel Ruiz, of the Order of Friars Minor Observant, and Seven companions. The memory of the Passion of the Lord is perpetually renewed in the Church, and the seed which the martyrs have always borne is most fruitful. Therefore, those among the faithful cannot be lacking who do not wholly heed the oracle of the Holy Spirit, professing Christ Crucified in word and deed: "For Thy sake we are killed all the day; we are counted as sheep for the slaughter" (Psalm 43, 22). Among these, and even in the latest times, are certain members of the Order of Saint Francis, namely Emmanuel Ruiz, Carmelus Botta, Angelbertus Holland, Nicanor Mianio, Nicolaus Alberca, Petrus Soler, all priests, and two lay brothers, Franciscus Pinazo and Iacobus Fernandez, who bravely fought the spiritual battle of Christ, offering to God, through the reasonable holocaust of their bodies, the highest and most precious glory of martyrdom. For when these men were dwelling in the monastery at Damascus, on July 7, 1860, Mahometans, inflamed with ancient hatred against Christ, God, devised a terrible massacre of the faithful, and with barbaric mockery,

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exposed the salvific banner of the Cross to the flames, inflicting countless injustices upon the Christians through fires, devastation, and slaughter. In the Franciscan monastery, during the night, they made a sudden attack, first afflicting them with grievous insults, vomiting blasphemies against the Catholic religion and its sacred mysteries; then, after their flattery proved fruitless, they resorted to terrors and threats. But they did not at all overcome the heroic constancy of the Franciscans, and therefore they tortured them all with savage torments until death. Eight were sacrificed to Christ, victims who, through their own blood, deserved to receive the glorious palm of martyrdom. The faithful, admiring such fortitude of spirit, immediately after their death considered them as martyrs, and have ever since invoked their patronage, testifying that they have obtained many graces and benefits from God through their intercession. Nor did the fame of these men remain within the confines of Damascus; but it spread so widely and far that it reached the ecclesiastical court of Alep [Beroea, Halab].

[*Latin ed. p. 421*]

In DAMASCENA, forty-two individuals were formally recognized by the processual records concerning their martyrdom. Consequently, in the preceding year, the Most Holy Pope Leo XIII graciously permitted that the matter of the signing of the Commission for the introduction of the cause of the aforementioned Servants of God be considered in an ordinary session of the Congregation of Sacred Rites, without the intervention or vote of consultants, although less than a decade had elapsed since the presentation of the ordinary process in the records of the aforementioned Sacred Congregation, nor had the writings of the aforementioned Servants of God yet been investigated and examined; His Eminence and Most Reverend Lord Cardinal Isidoras Verga, Relator of this cause, at the urging of the Reverend Father Bernardino a Cryptis Castri, a Priest Professed and General Postulator for the causes of beatification and canonization of the Servants of God, of the Order of the Friars Minor of the Observance of Saint Francis, and with the attentive letters of several Most Eminent Cardinals of the Holy Roman Church, Most Reverend Sacred Prelates, and other men distinguished by ecclesiastical dignity, in a meeting of the Ordinary Congregation of Sacred Rites held at Vatican, on a certain day, proposed the following question for discussion: Whether the Commission for the introduction of the cause should be signed in this case; and for the purpose in question, the Most Eminent and Most Reverend Fathers entrusted with the safeguarding of the Sacred Rites, after mature deliberation, and after hearing the Reverend Father D. Augustine Caprara, Promoter of the Holy Faith, who expressed his opinion both verbally and in writing, decided to respond: Affirmative, that is, that the Commission should be signed, if it pleases the Most Holy [Pope]; on December 17, 1885. All of these matters were faithfully reported to the Most Holy Pope Leo XIII by the undersigned

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Secretary, and His Holiness ratified and confirmed the decision of the aforementioned Sacred Congregation on the same day, and deigned to sign the Commission for the introduction of the cause of the aforementioned Venerable Servants of God, Fathers Emmanuel Ruiz and his companions.

D. CARDINALIS BARTOLINIUS, S. R. C., Prefect.

L. 8 S. LAURENTIUS SALVATI, S. R. C., Secretary.

SUMMARY OF FACTS. — Among the fierce persecutions stirred up by the infidels in these latter times, the cruelty was indeed great, both in the type of torments and in the number of martyrs, which occurred in the year 1860.

[*Latin ed. p. 422*]

422 In Damascus, the Mahometans and Druses, inhabitants of Damascus, perpetrated acts of cruelty, and with a great multitude of the faithful, they slaughtered those religious who belonged to the family of St. Francis, who resided in the monastery of that city. There were eight of them in number, six priests and two laymen, who, under the leadership of Father Emmanuel Ruiz, with the greatest edification of the faithful, cared for the spiritual welfare of the Christian people, urging men to piety and a holy life, through words and example. Having, therefore, experienced the filial affection of the devoted people, they aroused the anger and fury of the Mahometans against themselves. For these, inhabitants of the city of Damascus, from ancient times, have been consumed with a mad rage against Christians, and, with the connivance of civil authority, incited to commit atrocities, threatening a horrible slaughter of the faithful. For this reason, in contempt of the supreme authority which governs the Christian kingdoms, they distinguished five dogs by the names of the most powerful kings of Europe, and incited strangers, saying, "Behold, this is your king, your emperor, and your minister," and then they fashioned five crosses from wood, and placed them around the necks of those animals. Furthermore, they commanded the Christians to kneel before the dogs. And this was not enough; indeed, they drew crosses in the earth, and incited Catholic children to trample upon them, and they severely beat those who resisted this sacrilege. The Christians then approached the prefect of the city, and presented to him complaints regarding so great an injustice. But the burden of suppressing the audacity of these insolent men fell upon him, and he seemed determined to increase it. Therefore, on July 7th, the Mahometans, consumed by blind rage, attacked the Christians, perpetrating a miserable and unheard-of slaughter. Who could describe the inhumanity of this terrible massacre? Who could count the victims of the persecution, and sufficiently detest the hands of the impious, which were so abundantly stained with the blood of so many faithful? Everywhere, there were killings, fires, and plunder. To increase the horror of this great slaughter, the darkness of night arrived. How

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terrible, atrocious, and unjust was this slaughter, which elevated our heroes, who cared for so many thousands of Christians, and who shed their blood for the Catholic religion, to the ranks of the celestial martyrs! First among these illustrious martyrs is to be mentioned Father Emmanuel Ruiz, the Abbot of the monastery, who, in the year 1825, having embraced religious life in the Observant Province of the Immaculate Conception of the Blessed Virgin, and having excelled in theological and philosophical studies, perceived that he was divinely called to preach the word of Christ to the infidels, and was therefore destined for the Missions of the Holy Land. There, having learned the Arabic language in a short time, he devoted himself entirely to the care of...

[*Latin ed. p. 423*]

In Damascus, he [St. Alphonsus] bore abundant fruit for the eternal salvation of the faithful, through constant study and a most upright life, and opened the way to eternal joys for many. But in the fifty-sixth year of his life, he was killed by the Mahilmetans during that fierce persecution, and thus attained the most glorious crown of martyrdom. Following him is Father Carmelus Botta, also a Spaniard, who entered the Order of the Discalced Carmelites in the Province of Valencia, and in the year 1825, pronounced his solemn vows. Having completed a vast and distinguished course of studies, he was sent to Palestine, and, having acquired a most profound knowledge of the Arabic language, he went to Damascus, where he was appointed parish priest and master of young missionaries. He was so exemplary in his virtues and integrity of life that the entire city mourned his untimely death. Third in order is Father Engelbertus, also known as Angelus, from the Tyrol Province of St. Leopold, from the Diocese of Brixiensi, a man of outstanding sanctity and singular innocence of character, who was born in the village commonly called Ramisau, and in the year 1827, from the very flower of his youth, he won the admiration of all for the brilliance of his mind and the purity of his life. After diligently laboring for the salvation of souls, and being an indefatigable assistant to Father Emmanuel in his pastoral duties, he won the hearts of all Catholics, who loved him as a most devoted father; when, oppressed by barbarians, he met a glorious death for Christ. He holds the fourth place among the martyrs, Father Nicanor Ascanius, from the Observant Province of Castile. He was born in the year 1814, received the religious habit in the year 1830, studied ecclesiastical sciences, and, having been ordained to the priesthood, exercised the ministry of preaching for many years with great fruit for souls; and finally, in the year 1852, he obtained what he had long desired, namely, to be appointed as a companion in the mission to Palestine. But he soon received the crown of martyrdom at the hands of the barbarians. The two remaining priests are Father Nicolaus Alberga, from Andalusia, and Father Petrus Soter, from the Murciensi Province; both are men of outstanding

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virtue, the former born in the year 1830, and the latter in the year 1827, who, having entered the Order of the Minorites in the flower of their youth, after completing a vast course of ecclesiastical studies, were sent to Palestine, where they diligently applied themselves to the study of the Arabic language, and were carried off to the heavens in a glorious death by the barbarians. These illustrious priests, chosen gems of the Franciscan family, were accompanied by two laymen, whose names are: Brother Franciscus Pinaz d'As-

[*Latin ed. p. 424*]

424 In Damascus, Brother John James Fernandez. Born in Valencia, in the Province of Hispalis, in the year 1812, he received the habit of the Order of the Minor Franciscans at the age of nineteen. Afterwards, in the year 1843, he departed for the Holy Land, where he acquired great renown for his perfection in several monasteries of his Order. After having resided for some years in Jerusalem, he was transferred to the monastery in Damascus, where he met a glorious death. Another, having entered life in the year 1808, scarcely having reached the age of puberty, hastened to the cloister of the Minor Franciscans. He immediately showed himself eager to serve in the religious mission of Palestine; but he did not take his vows until the year 1859. With great piety, he visited the monuments of our religion; then, being assigned to the service of the monastery in Damascus, he was highly esteemed by all for his outstanding piety and humility, and he was adorned with the crown of martyrdom in that most grievous persecution of Christians.

A Synopsis of the Matter. Concerning the Proof of Martyrdom. – Indeed, the cruelty of the persecution, as described above, proves that glorious martyrs have fallen for the sake of the faith, for which no reasonable cause can be found, except the ingrained hatred of the Mahometans towards those who are faithful to Christ, and their innate barbarity. For the witnesses unanimously call the Druzes and Mahometans the authors of this unjust slaughter. And this is evident from the inhumanity itself from which it arose. The most bitter enemies of the Christian faith, in their contempt for religion, hung crosses around the necks of Christians, forcing them to trample upon them with their feet. Another argument is drawn from the threats and enticements with which the barbarians attempted to induce Christians to embrace the Mahometan religion. Therefore, the religious men of the Franciscan family, before being slain by this terrible death, were urged by their persecutors to apostatize; but since they remained steadfast in their confession of the Catholic faith, they perished, wounded by blows, stones, and swords. Other witnesses recount the interrogations made by the Mahometans to the martyrs, and their invincible responses. But who could describe in words how glorious was their death? The terrible slaughter had already begun; the sound of arms mingled with the savage shouts

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of the barbarians, and the glorious blood of the victims. The religious men, approaching the Church, poured forth fervent prayers to the Lord, and, encouraging those present to remain steadfast, they administered the sacramental absolution, and solemnly blessed them with the Holy Eucharist. Meanwhile, night arrived, a miserable night from whose darkness...

[*Latin ed. p. 425*]

In DAMASCUS, such a great loss to the Christians would have to be concealed. Religious men ascend to the heights of the monasteries, and there they perform the Sacrament of Confession with one another. Then arrive the Mahometans, greedy for their blood, inflamed with rage, who break down the monastery gates, burst into the cloisters, and mix funeral pyres with fires. The mind shudders to describe such inhumanity. Rather, let us extol the blessed fate of the martyrs, who so bravely deserved to suffer for Christ! Indeed, the death of the renowned Father Emmanuel was most worthy, and fitting for the leader of such an invincible company; who, not at all terrified by the clamor of the invading barbarians, entered the Church, refreshed himself with heavenly food, and scarcely had he received the Giver of heavenly grace in his heart, while performing the washing of hands in this sublime action, when he was seized and killed by the Mahometans who invaded the sacred building. No less heroic was the death of Father Carmelus Botta. Witnesses recount the invincible death of Father Peter Soler. Father Angelus Kramsck, while the Mahometans were tearing down the monastery, managed to flee from the religious house and escape the initial slaughter. Nevertheless, a glorious martyrdom awaited him as well. Indeed, as the Turks burst into the same house where he had taken refuge, they recognized him and urged him to renounce his faith. But when he vehemently refused, they struck him several times and then cut his throat. Of the two priests who remained alive, one was a companion of Father Angelus in his flight and martyrdom; while the details of the death of the other are unknown, it is certain that he met a fate equal to that of his companions in martyrdom. Finally, two laymen accompanied the priests in their fortitude, namely, Brother Franciscus and Brother James, who had taken refuge in the bell tower. These men were struck with clubs and thrown from the tower; the first died instantly, while the second was killed the following morning by a Mahometan with a dagger. Thus, all of them, confirming their faith in Christ, which they had proclaimed with voice and example, strengthened it with invincible fortitude and with their blood. Concerning the public fame of the martyrdom: Since such a glorious death for the Catholic religion was suffered by such invincible men, what is surprising if the faithful generally venerated them as martyrs, entrusted themselves to their prayers, and experienced the powerful intercession of their prayers with the heavenly Giver of benefits? Indeed, all witnesses testify to this with unanimous agreement. Moreover, it pleased the Lord

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to manifest this great glory of the martyrs through a certain prodigy, as if to depict an image of the highest glory to which their martyrs...

[*Latin ed. p. 426*]

426 The people of Damascus desired to be elevated to this blessedness. And what is more astonishing, the witnesses to this miracle were themselves heretics and infidels. Given these circumstances, and considering that it is clearly established through sound arguments that these men truly shed their blood for the faith of Christ, and that they have attained the glorious reward of the martyrs; and considering that the faithful universally regard them as martyrs, and that they earnestly pray to them in their own needs; and considering that it has pleased the heavenly Benefactor to increase the confidence of the faithful through these illustrious miracles, what remains, says the advocate, except that you, Venerable Fathers, should resolve the doubtful question – whether a commission should be established for the introduction of the cause, and for its examination and completion regarding the matter in question – with an affirmative answer, and that you should open the way for that most desired petition, so that at last these new victims of the Mahometan tyranny may be venerated with solemn public ceremonies. Indeed, all the faithful of Damascus fervently implore this, encouraged by the unwavering example of these religious men, and the religious Order of the Friars Minor of St. Francis, which has rendered so many services to the Catholic religion through its illustrious deeds, eagerly awaits the birth of so many heroes. They increase the common hope amidst the calamities of these times, and the nefarious war against the most holy laws of the Church, which is becoming increasingly insolent every day; for in no age have Christians needed such examples, by which they may defend the rights of religion with courage and zeal in such a wicked undertaking of the impious.

REMARKS OF THE PROMOTER OF THE FAITH.

It is still fresh in our memory the immense massacre that the barbaric Turkish hordes inflicted upon the Christian people of Damascus in the year 1860, which was filled with bloodshed, fire, plunder, and devastation. Among those killed were eight members of the Order of the Friars Minor of St. Francis, six of whom were priests, and two were lay brothers. The Ordinary authority of Damascus investigated the matter concerning their martyrdom in the year 1872. However, whether one considers the form or the substance of the proceedings, the matter did not proceed so accurately that no difficulties, or access to this preliminary judgment, would arise, as will be evident from what is said. Some defects in the form were noted; but since a remedy has been obtained from the Most Holy Father, I shall entirely pass over these defects of form, says the Promoter.

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However, he continued, the very nature of those who were introduced as witnesses required that they be questioned with the utmost caution, and that no diligence be omitted in order to ascertain their veracity in all things.

[*Latin ed. p. 427*]

In Damascus, 427 Muslims were killed. However, none of them were warned by the Judges about the force and gravity of the oath they were about to take; none were questioned about general matters. This defect is all the more serious because neither the Ordinary nor the appointed Judges wrote anything to the Holy Congregation about the faith that each witness deserved. There is reason to fear that the witnesses, or at least some of them, were instructed by the Prosecutor about how they should conduct themselves in giving testimony. Indeed, the appointed Prosecutor, when he asked the Judges to hear witness number 12 on the same day that he had taken his oath, also gave this reason: that he already had the depositions that he needed to take; because, just before, he had been subjected to an extrajudicial examination by the appointed Prosecutor. Just as this happened, could not others also have been heard by the Judges and the Prosecutor before, so that they were already prepared and instructed for the examination? Furthermore, it seems that in Rome, it has also become known what the witnesses said in that process. However, this never appears in the records. In the records, it is stated that the General Prosecutor, knowing that one of the witnesses (Ibrahim Mossadid) had said in his testimony that the cause of that immense slaughter of Christians was that the Christians were refusing to pay taxes for the soldiers, wrote to Father Ludovic of Ravenna, asking him to investigate whether the Franciscan friars were obligated to pay those taxes. Father Ludovic, for the purpose of investigating the matter, gave letters to Father Michael Cabagnes, who also requested information from the President of the Lazarist Missionaries, who responded negatively in a letter. These three letters are included in the process. One might argue that the Prosecutor acknowledged the matter, when the process was made public. However, even if that is the case, letters of this kind can only be included in the process extrajudicially; and therefore, according to the well-known decree of Venerable Innocent X, they not only do not constitute any degree of proof, but must be completely removed from the process, although they were included by ordinary authority. Before I discuss the matter of the reputation of martyrdom, it is necessary to point out that the information given by the witnesses is so lacking, that no one could construct a history from it about that terrible slaughter of Christians; indeed, as I said, if we did not remember it, we would hardly be able to perceive it from the records of the process. Therefore, the author was forced to draw information from the margin of a letter from Father Bonaventure of Solero, Custodian of the Holy Land, to Father Minister General of the entire Order of the Minor Friars, written in the year 1860. However, this

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letter is not only outside the process, but also outside the summary, and therefore, with regard to the cause, it cannot be considered to have any probative value, especially because it does not...

[*Latin ed. p. 428*]

428 From the remainder of that text, which is unknown to us, arguments may be drawn to refute objections. "I come to the reputation of martyrdom, which, according to the teaching of Benedict XIV, is nothing other than the estimation and common opinion that someone has patiently endured death for the sake of Christ, or for the sake of a virtue that leads to the faith of Christ, and that signs or miracles have followed their precious death, so that, with devotion, they are invoked by many in their necessities, etc." (Lib. II, Cap. 39, n. 7). Is this not the same as what is said about the martyrdom of eight Franciscans? Indeed, I see nothing about reputation in the Interrogatories; only in Article II is it stated: "The Christians killed in that persecution are considered by Catholics to be martyrs, as witnesses of worthy faith." However, witnesses 10, 11, 13, and 17 responded that they knew nothing about it. The others, for the most part, affirmed that not only these, but all Christians, both Druse and Mahometan, were considered martyrs at that time. Certainly, for simple and uneducated people, being killed by Mahometans is the same as being a martyr. But because martyrdom is not made by punishment, but by cause, the common opinion holds that the cause of the death of Christians in Damascus was not religious, but political. Indeed, witness 3 says: "I believe that one of the causes of the killing was that the Christians refused to pay a tax for the soldiers." Witness 9 says: "I believe that the killing was because the Christians did not want to pay a tax for the soldiers." Witness 4, in answer to the article, says: "I answer that the persecution was not out of hatred for the Faith, but for political reasons." The other witnesses, namely 1, 7, 8, 9, 10, 11 (12 is a unique witness on this matter and was not questioned), 13, 14, 15, 16, 17, 18, 19, responded that they did not know the cause of the killing. One witness, number 2, asserts that the slaughter was derived from hatred of the Christian faith. But let us consider the reason he gives for his assertion. It was against the Faith because they were drawing crosses on the public roads, and they forced Christians to trample on them. Not all, he says, were forced, but only the boys, according to the author of the Information. And this is not surprising: for no one can deny that the Mahometans, perpetual enemies of the Catholic religion, manifested their hatred of it in this way. But did they make an incursion so that they might force Christians to trample on the cross, or to swear an oath? And especially, were these eight killed precisely because they refused to trample on the cross? Witness 3 does not think so,

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and on Article I says:

[*Latin ed. p. 429*]

DAMASCENA 429 says: "I know that there is persecution against Christians, but I do not know whether it is against the faith itself. And the fact that politics, as they say, was the cause of that slaughter is further demonstrated by the fact that they only killed men, leaving women and children unharmed, as all witnesses affirm. Indeed, there were women and children who were killed; but, according to witness 2, some women were killed accidentally. If the Mahometans had not been motivated by greed, but primarily by hatred of the Christian faith, they certainly would not have distinguished between the faith of men and the faith of women and children. Nor, unless deceitfully, was any option given to them by the persecutors, either to renounce the Catholic faith, or to die. For those who renounced the faith were killed just as much as those who persevered in it, as all witnesses alike assert. Therefore, it was not the zeal of their own sect, nor the hatred of the Christian religion, at least directly, that drove them to commit murder; otherwise, those who embraced Islam would have been spared. They acted with that evil spirit with which they would have exterminated Jews and adherents of any religion (whom they all call infidels and hate) who did not pay tribute, and especially Europeans, because they do not want to tolerate the yoke imposed upon them by that fanatical mob. How much more so, then, priests, leaders, and teachers of Christians? But you say, the Franciscan friars were not required by any law to pay tribute. Granted: does this prove that they were killed solely out of hatred for the Faith? Could not that same motive have been given to them by those plunderers because the Christians were reluctant to pay the tribute? Furthermore, it must be added that no option was given to the individual Franciscans, either to renounce the Faith or to die. Therefore, apart from what has been said, there is no certainty about the constancy of all in enduring death. Indeed, an option was given to Father Peter Soler, Father Carmelo Botta, and Father Angelo Kolland. To these must be added Father Emmanuel Ruiz, who, after having received the Holy Eucharist, was killed at the altar. Certainly, if there had been sufficient evidence on the part of the persecutors to declare the martyrdom of these individuals, I would not object to the introduction of a trial. But as for the others, we only know that they were killed; among them were Brothers Francis and James, Franciscan workers, who were thrown from the bell tower: Francis died immediately, the other was killed with a sword the following day. Who, then, can tell us about their will and their constancy in enduring death? Who can safely assert that they gave their lives willingly for the Christian faith? And I do not know whether that

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Father Angelo and another Francis-..."

[*Latin ed. p. 430*]

430 In Damasco, est ignotum quid accideret, cum alii, reliquos sodales desertos, a coenobio fugerunt, et se in domibus aliorum abegerunt, ubi, velis muliebrum amicti, in cubiculo cum multis mulieribus totam noctem peragenda habebant. Aurora lucente, uterque inde recessit; sed P. Angelus, paulo post, illuc reversus est, et ibi mortem invenit. Hoc, ut minimum dicam, sapientiam viri parum commendat, neque multum prodit voluntatem martyrii suscipiendi. Sed hos et socios excusare volo, quia probe sciebat non se martyres futuros, si occiderentur, sed victimas tantummodo futuros obortae seditionis barbarorum cohortium, quae, a Christianis vectigalia non soluta, poenas indiscriminatim et tumultuarie exigebant. Ceterum, ex relatione testium, dubium manet num plus quam octo Franciscales a barbaris interfecti fuerint. Nam interrogatorio 19, non octo, sed decem vel duodecim enumerat. Cur, si eadem fuit causa occisionis, hi alii non etiam ut martyres haberi possint? Hoc, sane, per testes probari potest, qui affirmant famam de martyrio sodalium Franciscalium in populo tantummodo exorta esse, et modo vigere, quia homines simplices ad martyrium constituendum sufficientem esse putant mortem irrogatam ab adversariis fidei catholicae, sine ullius rationis de causa propter quam ille occisus fuerit. Ceterum, quale obsequium christianus populus Damasci his martyribus nunc exhibet? Nullum. Nam, si unum testimonium 7 exceptamus, qui ad locum ubi sepulti iacent (in cella vinaria) bis accessit, nemo ex testibus se illuc accessisse, vel eorum invocationem asserit. Quae signa sunt? Pariter nulla, si sanationem ab eodem testem acceptam a capitis dolore excipias, quae non solum naturalis videtur esse, sed ceteris omnibus ignota mansit. Quod autem testis 12 quadam nocte viderit lumen et fumum incensi in cella vinaria, prope sepulcrum Franciscalium, hoc, ne Iacobitae testimonio phantasiae tribuant, nihil supernaturalis habet; enim illae cellae aditus patebant per fenestras depressas et angustas. Nonne itaque quisque eo ingredi potuit, lumen et fumum adducturus? Ergo adhuc plura desiderari videntur, ut ea qua decet maturitate iudicii, et consilium, quaerantur: signandam esse Commissionem Introductionis Causae. Haec enim Commissio asserere debet certo veram et solidam famam martyrii, signorum, et devotionem conceptam in pluribus mundi partibus, et invocationem Servorum Dei.

[*Latin ed. p. 431*]

DAMASCUS 431. RESPONSE OF THE DEFENDER TO THE OBJECTIONS RAISED BY THE PROMOTER OF THE FAITH. After the Defender had responded to all the objections concerning the form of the proceedings, he proceeded to address those concerning the substance of the collected testimonies, and said: The Accuser complains that the witnesses were not

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warned about the force and gravity of the oath, nor were they questioned about general matters. But with regard to the first point, although the records do not explicitly state that a warning about the force and gravity of the oath was given, it does not necessarily follow that it was omitted. However, even if this warning was omitted, it is not essential, nor is it required by any law for the validity of the examination, especially in proceedings conducted with ordinary jurisdiction. For anyone who has even been lightly instructed in the fundamental principles of the Catholic faith knows how great is the importance of taking an oath, and how heinous and abominable is the crime of perjury. As for the second point, since the ordinary investigation is only bound to observe the norms of common law, the Accuser can demand nothing more from the judges than that they, in the examination of the witnesses, satisfy those general requirements which common law prescribes. In our case, indeed, the judges questioned each witness about their name, surname, age, and country of origin; and they did not admit any witness to examination until they had first sworn them to speak truthfully and to maintain secrecy. If other general questions, which are customary in the Sacred Congregation when examining witnesses, are lacking here, it should be noted that these proceedings were conducted in Damascus, a city very distant from the Apostolic See, in which it is not possible to expect the same expertise in our law as distinguishes other prelates; so that rather, one should admire that the proceedings were completed with such diligence that they contain no defects of substance, and in many respects, not only do they observe the norms of common law, but they also demonstrate a strict adherence to the particular constitutions of our Congregation. Furthermore, it is not the duty of the judges, appointed by the Ordinary of this place, who are ignorant of the customs of this forum, to have sent letters to this Sacred Congregation concerning the faith of the witnesses, along with the procedural acts. Indeed, as Benedict XIV teaches in *De Servitiis Ecclesiae*, Book 2, Chapter 50, paragraph 4: ”The necessity of informing the Holy See about the faith of the examined witnesses must be derived from the formula of the Remissorial Letters, and therefore it is restricted to Apostolic Processes alone.” Should a doubt be raised about the faith of the witnesses because of this omission? By no means; for there is no reason to justify such a doubt, especially since, in our case, the legal maxim holds true: ”No one is presumed guilty unless proven so.”

[*Latin ed. p. 432*]

432 In Damascus, a man is accused of a crime, which is always considered a very serious matter among all nations. Here, we have eighteen witnesses, of diverse nationalities, homelands, and religions, with no familial connection between them, who unanimously testify to the cruel persecution inflicted upon religious men by the Mahometans, and to the unjust

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death inflicted upon them. These sad events were known to the citizens of Damascus, the judges were aware of them, and the news had spread throughout the world. Therefore, in light of these circumstances, the rules of critical analysis suggest that full credence should be given to the testimony of the witnesses.

However, another concern arises in the mind of the most esteemed Censor: namely, whether the witnesses, either all of them or some of them, may have been instructed by the Prosecutor on how they should conduct themselves while testifying. The advocate has presented more arguments against such an objection, and has proceeded further, but why do I linger longer in explaining this objection? It is completely dispelled if one considers that the Prosecutor stated before the judges, before the sacred Tribunal convened, that the aforementioned witness had been examined extrajudicially; but that he had not been instructed regarding his responsibilities. How great is the difference between the two? It is a difference that cannot escape the most astute defender of the faith. Furthermore, it is not only permissible, but even in accordance with the law, for the Prosecutor to examine a witness before calling him, in order to ascertain whether he is aware of the facts about which he will be testifying; thus, time and effort are not wasted on calling those who are ignorant of the matters to be presented.

Therefore, the context must be explained as follows. The Prosecutor requested that the judges examine Witness 12, who had taken an oath on that very day, because, as a civil servant, he could not appear a second time before the sacred Tribunal; moreover, he had already been heard extrajudicially regarding the facts to be presented before the sacred Tribunal, and had been found to be well-informed about them; therefore, his examination would contribute greatly to the case, while his absence could be a serious detriment. For these reasons, the judges considered it appropriate to grant the Prosecutor's request.

I do not know why the most astute defender of the faith is so surprised that what the witnesses testified in the proceedings became known in Rome, when he himself later admits that it could have happened if a public legal process had been conducted. Indeed, this is evident from the very date on which the letters, to which the Censor refers, were written. Since the proceedings were published on November 26, 1872, the first of those letters was sent from Ravenna by Father Ludovico.

[*Latin ed. p. 433*]

In Damascus, on the 433rd day, which is July 7th of the following year, 1873; therefore, it appears that the aforementioned document was written several months after the publication of the aforementioned process. However, the best judge is not so much concerned with the question of whether the statements made by the witnesses in Rome were known before or after the publication of the process; rather, the question is what authority should

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be given to these letters, since they could only be included in the process extrajudicially. The defender replies, stating that these letters were indeed placed outside the main body of the summary. It is wrongly presumed that they should be removed from the process records by the decree of Innocent X, if indeed that decree does not apply to them. In truth, that restrictive clause, according to the well-known maxim of law – "odias sunt restringenda" – possesses a strict interpretation, and should not be extended in any way beyond the cases contemplated therein. Therefore, according to the terms of the decree, it only prevents the Postulator, or any other person of whatever rank, from daring to obtain information, or extrajudicial testimonies, or subscriptions regarding the sanctity or miracles of any Servant of God. Only these, and no other extrajudicial documents, if included in the processes, should be considered as having any validity, and indeed should be removed from the records. With these things explained, it is now clear that the letters we mentioned above are not of this kind; for they do not concern sanctity or martyrdom, nor do they concern miracles, nor do they contain anything that refers to the glorious death of religious men, or the outpouring of blood shed with invincible fortitude for the Church of God. They only serve to clarify certain facts relating to the general history of that persecution. Furthermore, the Objection states that the information provided by the witnesses is so meager that it is impossible to construct any meaningful account of the tragic fate of those Christians. I cannot deny that the process records were very concise. This, however, should be excused by the inexperience of the judges of that region, who, while performing the duties of missionaries, are more concerned with saving souls than with learning the rules of our law. While we deplore this brevity in the preparation of the records, we nevertheless maintain the truth that is contained in the completed investigation, which is sufficient for a favorable outcome to this present inquiry. For it is clearly stated in the testimonies of the witnesses that the cause of death, and the outstanding fortitude of the religious men, made these illustrious men into heroes of the Church, and into renowned martyrs. Acts, Vol. XVIII, page 28.

[*Latin ed. p. 434*]

434 DAMASCENA Concerning the letters of Father Bonaventure from Soler, Guardian of the Holy Land, addressed to the Minister General of the entire Order of the Friars Minor in the year 1860, the defender replied that they had not been used to demonstrate the merit of the cause, but because they contain much useful knowledge. Furthermore, although we have not used them to demonstrate our thesis, I do not know whether it can be maintained, as the Accuser asserts, that they contain no probative value. For it is a historical document, public and contemporary, written without contradiction, relating events that occurred before the eyes of all. The Accuser, citing the definition of the Masters of law regarding the reputation

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of martyrdom, asks whether this is the case with the reputation concerning our martyrs. The Advocate replies: Our Accuser cannot deny that the greater and healthier part of those who appeared before the judges have confirmed the reputation of martyrdom among the people. Nor is there anyone found who has been tainted by it, or who has contradicted it. However, according to the observer, four of those examined, when asked about the reputation of martyrdom among the citizens, replied that they knew nothing about it. Let us see: what are these four who, without contradicting, merely exhibit ignorance, while we have fifteen who unanimously testify? But the astute Accuser admits that, which he could not deny, the greater part of the witnesses have testified with unanimous approval regarding the reputation of the martyrdom concerning the death of religious men among the people; he adds, however, that not only our brethren, but all who perished in the fierce persecution inflicted by the Mahometans, are to be considered martyrs. But what does this have to do with our case? Is it not known that that immense slaughter was incited by hatred of the faith, and that it produced more martyrs for Christ in the Church? We maintain that the religious men of the Observant Order of the Friars Minor, killed by Mahometan barbarity, were martyrs of Christ, and we do not exclude others, but we merely set them aside for the present. Furthermore, the defender continued, I do not know on what basis the Promoter of the Faith's conclusion rests, that even the most simple and uneducated people consider the killing by the Mahometans to be the same thing as martyrdom. But I ask you, are all the Christian inhabitants of Egypt and Syria simple and ignorant people? What about the many excellent missionaries, belonging to various religious families? What about the most upright priests and pastors of souls? What about the very Bishops of the Churches? Are all these to be considered among the simple and ignorant? But these are common people.

[*Latin ed. p. 435*]

DAMASCENA 43. Some are aware that a martyr is not one who is killed, unless it is for the sake of the Christian faith, and is subjected to the greatest injustice. However, an objector arises with a more serious observation, and argues that, considering carefully, the cause which makes martyrs is not so much the punishment itself, as the reason for it. He contends that, according to common opinion, the cause of the massacre of Christians in Damascus was not religious, but political. He strives to demonstrate this with the authority of certain witnesses, who say that that immense shedding of Christian blood originated from the fact that Catholics refused to pay taxes imposed by the civil authority for the soldiers. To completely refute this difficulty, it must be distinguished between the ultimate cause of persecution and martyrdom, and its occasional cause. It often happens that persecutors, in order to maintain the severity of the crime by unjust means, kill religious men, inciting hatred against the faith; yet they take

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the occasion and pretext from some civil or political reason. Our Master has this in book 3, chapter 13, number 12: "One might ask... whether it is sufficient for martyrdom to be moved to inflict death from hatred against the faith of Christ, although the occasion of death is taken from another thing, which either has nothing to do with the very faith of Christ, or is accidentally related to it." The answer is affirmative, because the act derives its true character not from the occasion or from the impulsive cause, but from the final cause. He proves this doctrine with numerous examples. Even recently, when the matter was being considered of approving the memorable cult of the most celebrated philosopher Severinus Boethius, as a martyr of Pavia in the City, *Fidei Vindex* opposed that the cause of his death was not religious, but political; that is, because of a false accusation, or because of his zealous defense of the freedom of the Senatorial Order. From this, he requested that the mention of martyrdom be removed, since it is the cause, rather than the punishment, that makes a martyr. But, when it has been proven in his defense that the pretext and cause that gave occasion to the death of that illustrious philosopher was indeed political; yet the final cause that drove King Terry to inflict cruelty against the excellent man, and against other martyrs of that time, was nothing other than hatred of the Catholic faith, conceived by Prince Adrian, and the celebrated cult paid to this philosopher from ancient times, was solemnly confirmed as that of a martyr. In conclusion, the advocate says, the very fact of the intolerable burdens imposed on Christians reveals the driving and final cause of such persecution; for these taxes were imposed on them because, as followers of Christ, they were hindering the oppression of the Mahometan yoke.

[*Latin ed. p. 436*]

436 In Damascus, whatever the case may be, if those individuals were refusing to fulfill the obligations imposed upon them, the civil authority certainly lacked the means to compel them and to restrain them with proportionate punishments. But what have we seen? The civil authority accomplishes nothing directly. They are not its ministers, nor are they soldiers who would force those who are unwilling; but Druzes and Mahometans, and other barbarians inhabiting neighboring regions, invade the city, and not only do they refuse [to comply], but they oppress the Christians, killing as many as they find, and through murders and pillages, they perpetrate a great slaughter of Christians. What caused these people to be driven to commit such a crime? Was it the taxes that some of the Christians were not paying? What concern was there for them regarding taxes? Is it not clear that the hatred with which they burned for Christ drove them to such a slaughter? Indeed, all of this has nothing in common with a political cause; and it clearly demonstrates that this persecution against the Catholic religion was solely aroused by an intense hatred. Furthermore, if, as I have already stated, the refusal to pay the obligations was the ultimate and mo-

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tivating cause of the persecution, then those who were the authors of the fault should have been punished; but on the contrary, the devastation was directed against all, with unheard-of cruelty, especially against priests and religious men. Benedict XIV, book 3, chapter 14, paragraph 5, among the arguments that prove that the persecution was aroused by hatred of the faith, mentions the option given to the faithful to recant their faith in order to escape death. Indeed, this option was not lacking in the matter, as it is evident from the unanimous testimony of witnesses. "It is necessary to have one witness who testifies that this slaughter stemmed from hatred of the Christian faith," this observation asserts. But what then, when the truth of this testimony is strongly confirmed by the facts? Moreover, what does it matter that Witness 6, when asked in the fifth interrogation about the cause of the persecution, responded: "because of hatred for Christians"? Truly, the reason given by Witness 2 to demonstrate that the persecution arose from hatred of the faith does not please some, because they claim that they were drawing crosses in the streets and forcing Christians to trample on them. But for what reason? Is this not an argument that clearly demonstrates that the hatred of faithless men prompted this great injustice, forcing Catholic men to trample on that which they themselves held as a sign and symbol of their own faith? Listen; for, as he himself adds, according to what is read in the information, not all were forced; but only the boys. Therefore, does this reason for this injustice destroy the abnormality, or does it make it less evident?

[*Latin ed. p. 437*]

DAMASCENA: What inspired such hatred for our most holy faith, leading these barbarous men to such cruelty? Indeed, the atrocity of this crime is amplified when we consider that it was directed against those who, by the very nature of their age, are the most vulnerable. Censor argued that the cause of this slaughter was political, and he further demonstrated this by stating that, according to the barbarians themselves, they only killed men, leaving women and children unharmed; a fact, he claims, confirmed by all witnesses. However, Witness 1 contradicts this, testifying that he himself saw women and children killed by the Mahometans in the same manner as the men. But let us grant, for the sake of argument, that more witnesses testify that, in general, women and children were spared by the infidels; does Censor then argue that this further proves that the cause of such persecution was political? His words are: "If the Mahometans had not been motivated by a desire for plunder, but primarily by hatred of the Christian faith, they certainly would not have distinguished between the faith of men and the faith of women and children." To this, the advocate responded: "It is certainly possible that a desire for plunder played a part in the hearts of these savage beasts; but, nevertheless, the primary and overriding cause of this slaughter must be attributed to the innate hatred of

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the barbarians for the Christian faith. Indeed, even this desire for plunder stems from that very cause. For the Mahometans desire to seize the possessions of Christians because they are consumed by a fierce rage against the children of the Catholic Church." It follows, therefore, that the desire for plunder was not the primary or driving force behind this slaughter, but rather a secondary consideration, as evidenced by the fact that, if it were otherwise, the barbarians would have focused directly on possessions and only indirectly on people. But, on the contrary, their primary objective was to induce apostasy from the faith and then to barbarously kill those who resisted. It is easy to understand, from numerous examples of similar persecutions, the reasoning by which these beasts, rather than men, preserved the lives of women and children. For the former are more easily susceptible to seduction due to their weakness, while the latter can be used to serve the nefarious purposes of their persecutors. Indeed, the testimony of the witnesses clearly demonstrates that this was a truly wicked motive that drove the hearts of these depraved barbarians to preserve the lives of women. Regarding the choice offered by the barbarians to Christians – either to die or to renounce the Catholic faith – it is observed that this was a deceptive tactic; for, as all witnesses attest, both those who renounced their faith and those who remained steadfast in it were killed alike. But not all witnesses assert this, the advocate responded.

[*Latin ed. p. 438*]

438 In Damascus, the advocate mentions: not the witnesses in 1, 10, 6, who report that those who embraced Islam were saved. However, other witnesses unanimously report that some of those who had fallen away from the faith were saved, while others were killed. From this, it follows that some of those acts of cruelty by the Muslims were so inhumane that they did not even spare those whom they had induced to apostatize. Furthermore, Censor states that Europeans were particularly hated by the Muslims because they refused to tolerate the yoke imposed upon them by that fanatical sect; how much more, then, do Christian priests, as leaders and teachers, incur the wrath of that sect? I ask the best of censors, what does he mean by "yoke": does he mean a civil yoke, or a religious one? If he means a civil yoke, then it was rather the Muslims who imposed the harshest yoke upon the European regions. But if he means a religious yoke, then he is on our side, and agrees with us. For that fanatical sect pursues Catholics with implacable hatred, because Catholics, rather than imposing a religious yoke, seek to convert the unbelievers through the constant preaching of the Gospel and the example of their most excellent virtues, and to bring souls to Christ. And since priests, as leaders and teachers, excel in this sublime mission, the best of censors rightly observes that they are particularly targeted by those barbaric hordes, as if they were victims of a mad frenzy. But what does this imply, except that the

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hatred of faith has stirred up the minds of the persecutors to pursue the followers of Christ, and therefore, those who were victims of this unjust persecution have attained the true palm of martyrdom? However, we do not draw any argument from the fact that no law compelled the members of the Franciscan order to pay taxes; we merely observe that the reluctance of Catholics to pay taxes was not the ultimate cause of the persecution, since those who were not obliged to pay taxes were, on the contrary, the first to be killed. It is scarcely safe to say that the entire persecution of the Catholic religion was aroused by hatred, since it also follows from this that these servants of God were punished with death for their faith. But, the observation continues, it could not have been granted to those brigands by the counsel of religious men that Christians should refuse to pay taxes. It is true; but such a pretext would have been so flimsy that even barbarians would not have dared to use it. For the leaders and teachers of the Catholic faith know that they urge their followers to obey civil authority, and to observe all just laws, as long as these laws do not contradict divine precepts. It does not follow that each and every religious man has the option to...

[*Latin ed. p. 439*]

DAMASCUS: 439. Vindex, among other things, presents the option of denying Christ or dying. However, he admits that this option was offered to Emmanuel Ruiz, Peter Soler, Carmelo Botta, and Angelo Kolland, and he adds that he does not know whether Father Angelo Kramsck was also invited. But it is easy to find an error in the writing or printing, especially when it is noted that in parallel passages with the same information, we have clearly distinguished between Father Angelo, with the surname Kolland, and not Kramsck. Indeed, if a suitable cause for martyrdom existed on the part of the persecutors, I would not object to the introduction of a cause for the beatification of these individuals. Therefore, since it has been sufficiently demonstrated that a suitable cause for martyrdom was not lacking on the part of the persecutors, we now have four out of the eight that we proposed, for which, with the approval of the Censor, the cause for introduction can rightfully be requested. But why would the Censor refuse to grant equal glory to the other four, who shared in the same death? Because, as he himself states, we only know that these were killed. To this, we reply that all the evidence suggests that these, like the others, were also tempted to renounce their faith before they were killed. Indeed, the testimonies state that the faithful Christians, who were killed in that cruel persecution by the barbarians, were offered the option of renouncing their faith. Therefore, why not all of them, and why not these four religious men? Does it not stand to reason that their companions were also tempted to renounce their faith? In fact, many of the witnesses state that this option was offered to all the religious men. Nor should two lay members be excluded. The Censor mentions that they were thrown from the bell tower, one dying

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immediately, the other being killed the next day with a sword. But, I ask, could they not have been tempted to renounce their faith before they were thrown from the bell tower? And if so, as Witness 12 testified, they did not fail to speak with secular individuals whom they encountered by chance, so why not with these? But even if it cannot be proven that this option was offered to each of the religious men, does that mean that there is a lack of evidence to assure us of their will and constancy in enduring death? Our Master, speaking of the will and constancy of the martyrs, teaches that these must be demonstrated through external acts, up to the moment of death and even in death itself; however, to the extent that knowledge of these acts is possible (1). Indeed, Master Benedict XIV, in book 3, chapter 7, proves this doctrine with the example of Julian, who, being enclosed in a temple with vipers and scorpions, endured martyrdom.

[*Latin ed. p. 440*]

In Damascus, our brethren, adhering to our doctrines, present two accounts to demonstrate the constancy of our martyrs; one concerning the preparation for martyrdom, so to speak, from afar; the other, concerning the immediate circumstances. The first consists of the repeated prayers made by the Superiors of the Franciscan Order, that they might be sent to the mission lands. For we know that this arduous task is not assigned to those unless they demonstrate a steadfast and unwavering will to offer all sacrifices, even their own death, for the salvation of souls. They knew that the lands of Asia and Egypt had already been repeatedly drenched in Christian blood, and that death was being brought by barbarian tribes, and that they themselves were threatened by the hatred of those same people. Nevertheless, men were not wanting who were prepared to endure all things for the love of Christ.

Here is added a second account, taken from the very events that preceded and accompanied the glorious death of these heroes. Indeed, the more certain they became of the imminent danger to themselves, the less they showed any sign of fear, and with a calm and joyful spirit, they prepared themselves for their impending death. They could still expect the arrival of barbarian hordes, they could find safety with the soldiers of Algeria, under the command of Abdelkader; yet they preferred to await their tyrannical persecutors in their own homes. Meanwhile, they approached the Church, confessed their human frailties to one another, received absolution, and strengthened themselves with the Holy Eucharist to bravely endure the torments of the barbarians. Surely, those who, as the persecutors approached, did not flee, but with such tranquility of spirit met the fury of their madness, did they not, by that very act, demonstrate that they were prepared, with a strong and willing spirit, to offer their death for the faith?

But all the religious men did not act in this manner. The Vindicator of the

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Faith does not deny that the cause of Father Angel Rolland could be introduced; but at first, he merely noted, as if in passing, that a religious man, lit. "Constare debet de interna perseverantia," i.e., it must be established of internal perseverance, "obitum, per actus externos usque ad quantum fieri potest," i.e., death, through external acts as far as possible. From this, Bishop Chemeron states that, concerning many, among whom are those in Nilopolis, others dispersed in different monasteries, some died of persecution, others fled, and it would be necessary to say that sufficient proof of their final perseverance was established from their deeds and actions before they were "thrown into the sack," i.e., killed.

Among other examples he presents, the case of those who were "consumed by beasts" favors our situation; others were taken by wild animals and killed by robbers. The final acts of those martyrs, of whom mention is made by Dionysius of Alexandria in Eusebius, and who are remembered in the Roman Martyrology on December 22nd, are sufficiently apt to provide an argument for the subsequent and final acts. These are Saint Saturninus.

[*Latin ed. p. 441*]

DAMASCENA 441. It is said that the name "Angel" was given to him as a nickname, on account of the beauty of his body, and his pleasant manners. What, I pray, does the learned observer intend by these words? Does he mean to suggest something about the man's religious life? I do not think so; for how contrary it is to the ways of charity and justice, no one can fail to see. And indeed, the burden of proof lies with him. Furthermore, in order to remove any suspicion that might arise from the words quoted in parentheses in the observer's remarks, it is enough to note that they are not found in any of the testimonies of the witnesses, but in a certain document presented by the Vice-Postulator of the Patriarchate of Syria for this cause, in order to initiate an ordinary investigation into the declaration of the martyrdom of the Servants of God. Could such words have been included in a document of this kind, if they had a meaning different from the one they appear to have, namely that the religious man was called "Angel" because he combined an extraordinary physical form with outstanding courtesy and was adorned with all virtues? Therefore, the Postulator rightly affirms that, on account of "these excellent qualities," the inhabitants of the city of Damascus, who were Catholics, were drawn to him, and that he was distinguished by the appellation of "Angel." But rather, we are called to consider the events connected with the death, rather than the life, of this renowned religious man. For, as is read in the remarks, Father Angel, along with another Franciscan, fled from the monastery and took refuge in the house of a certain woman, where, wearing a woman's veil, they spent the entire night in a room with several women. At daybreak, both of them left; but Father Angel returned there shortly afterward. After recounting these things, he adds: these actions, to say the least, do not commend the

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man's prudence, nor do they reveal much about his willingness to suffer martyrdom. The advocate has previously mentioned the companion of Father Angel, and it is certainly not established whether this companion was another religious man, or a layperson; then he adds: furthermore, it is enough to note the circumstances in which these religious men entered the house of the women to cleanse them of suspicion. The observer recalls how terrible that night was, how much Christian blood was shed! Father Angel, along with his companion, had managed to escape from the monastery, which had already been invaded by the Muslims, as if by a miracle. Yet, in the darkness of the night, in the midst of so much slaughter, they could have encountered enemies of the Cross from all sides. What other thought could have entered the mind of anyone, except to enter the house of a nearby friend, whatever it might be, where he could find safety?

[*Latin ed. p. 442*]

In DAMASCENA, there resided certain Catholic religious women who dwelt in the house of Bertrand. During that terrible night, amidst such horror and the threat of death, they sought refuge there. Other Catholic women had also fled to the same house. Now, pray tell, what counsel did Censor offer? Should they have ventured forth again, seeking out certain death? Could the Angel of the Lord, in that night, amidst those circumstances, and in such peril to their lives, have entered that house and instilled even the slightest suspicion? But, he adds, not only did she remain within the house, but she also donned a religious habit. Indeed, what fault, or what lack of prudence, could there be in this? The habit is not, unless it be of wool, one that women are permitted to wear, and it possesses no form of womanly attire. What, then, is the evil, or the impropriety, in a religious man using it to preserve his own life? Thus, let us summarize what we have said: the conduct of religious individuals, the modesty of Catholic women, and the particular circumstances of that horrific night are such that, although the actions of the Angel of the Lord may seem imprudent, they are entirely devoid of any true fault. But what of Censor's other objection? Does this same course of action not, at the very least, demonstrate a lack of willingness to endure much suffering? Because the Servant of God, along with his companion, abandoned the monastery when the Mahometans invaded, should he therefore be excluded from the glorious reward of martyrdom? If this were the case, how many, whom we venerate as heroes of the Catholic faith, would be erased from the ranks of the blessed martyrs! But our Master taught otherwise in His Gospel, leaving us this precept: "And when they shall persecute you in this city, flee into another. Amen I say to you, you shall not finish all the cities of Israel, till the Son of man come." Interpreting these words, and following the example of the Divine Savior Himself, who did not deem it unworthy to hide Himself when sought, and who, when He suffered persecution, fled and avoided

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dangers until the appointed time arrived, when He wished to suffer for all and willingly surrendered Himself to His persecutors, he adds: "The Saints, having learned this lesson also from the Savior... fled from their persecutors, in order to fight legitimately, and they hid themselves from them. For since they did not know the end appointed to them by Divine Providence, they did not wish to surrender themselves recklessly to those who sought to harm them; but on the contrary, when they knew that it was written, 'In His hand is the lot of men, and the time of death,' and that the Lord could both kill and make alive; then, 'they persevered to the end, going about in sheepskins and goatskins, being destitute, afflicted, and wandering in the wilderness.'"

[*Latin ed. p. 443*]

"DAMASCENA: When the time of death approached, or when He who had determined that time spoke to them, either restraining those who plotted against them, or certainly delivering them up to their persecutors, whatever pleased Him." (In Apol. de fug.). Following these teachings, Benedict XIV, in book 3, chapter 1, paragraph 1, number 3, explicitly states that, in times of general persecution against Christians, or a particular persecution against one of the servants of God, generally speaking, unless the good of souls requires otherwise, they can flee and avoid danger, so that, if they are subsequently apprehended and suffer death for Christ, their previous flight in no way prevents them from being included in the list of martyrs. The reason is that such flight is in no way a denial of the faith, but rather a virtual confession of faith; for he who flees, facing imminent persecution, suffers many inconveniences, and he who suffers for the sake of the faith, confesses that faith. Therefore, the will to suffer martyrdom is not diminished by flight, but rather included in it, provided that this will is based on the fact that someone, if compelled by the agents of the tyrant to renounce their faith, is more willing to endure any torment and even death itself, than to stain themselves with the crime of apostasy. Surely, anyone can see that every Christian fleeing from the cruelty of persecutors can simultaneously possess this will! Now, from these general principles, if we descend to our case, we have Father Angelus Kolland who, it is clear, had already demonstrated the will to suffer martyrdom when he requested that the mission be entrusted to him in the city of infidels. When a fierce persecution arose, and the Franciscans' monastery was invaded by Muslims, he did what was permissible to him, and what the needs of the Church required, as he was a coadjutor priest, and was held in high esteem not only by Catholics, but also by infidels, and could do much good through his sacred missions. But did he change his will to undergo martyrdom, if it had been necessary for the sake of the Christian faith, when he escaped from the fury of the barbarians? Let the reader judge from his invincible conduct, after he was discovered by the Muslims. When incited by those persecutors to

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openly profess the Catholic faith, without any imminent threat of death, he openly declared that he was a Christian. The barbarians insist, seeking to lead him to apostasy through terror and threats; but their efforts are in vain. Fearlessly, he replies, "I am a Christian," for the third time; then, blinded by fierce anger, the savage beasts attack him, dragging him from his cell with sacrilegious hands, bringing him into the courtyard, where they wound him with repeated blows and, inflamed with rage, urge him to apostatize. But the strong man, already stained with his own blood, still exclaims, "Chri-"

[*Latin ed. p. 444*]

444. I am from Damascus; and these words are spoken by the glorious martyr who received a wound in Oslo, which severed his head. Is not this death renowned, and fitting for a hero of the Catholic Church? However, I do not know how doubt could arise in the mind of the most excellent Defender of the Faith, concerning whether more than eight Franciscans were killed by the barbarians. For, according to the testimony of witnesses, only eight men from the religious family of the Observant Minorites resided within the cloister of Damascus. How, then, could more than those present in the monastery have been killed by the Turks? But the accuser provides a good reason for doubting, citing Witness 1, from whose deposition it appears that he found the bodies of ten or more who had been killed. However, all reason for doubting is easily dispelled, if one considers that Witness 1 did indeed admit that he buried more than eight bodies of the slain; but he did not say that all of these belonged to religious from the Franciscan family. Indeed, it is clear that he did not know to whom the bodies of the slain belonged. Finally, the advocate says: "The prosecutor observed that the Christian people of Damascus show no reverence for these martyrs; for, except for Witness 7, who went to the place where the remains of the martyrs were buried, none of the witnesses testified that they had gone there or invoked the intercession of any of them." But, I say, is it necessary to demonstrate the piety of the faithful people towards these glorious athletes of Christ, that the witnesses should testify before the judges that they themselves went to the place of the tomb, or that they implored the intercession of the Servants of God? Is it not sufficient that the faithful themselves testify to this? Indeed, the faithful of Damascus consider it most pleasing to God to seek the intercession of those religious who were killed for the faith, and it is clear that they acknowledge them as true martyrs of Christ. And there are those who go to the tomb to venerate the relics of the Servants of God. This confidence in the intercession of the Servants of God grows more and more from day to day, as Witness 12 testifies, who, as keeper of the keys to the tomb, is always obliged to accompany visitors. Witnesses 7 and 12 testify to the fame of miracles. However, the prosecutor observed that the healing received by Witness 7 from a headache appeared to be

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entirely natural, and that it remained unknown to all others. In response, the advocate said: "Here, we are not speaking of the merit of miracles, but only of their fame." But in the case presented, it is certain that Witness 1 was afflicted by a vehement and obstinate...

[*Latin ed. p. 445*]

In Damascus, a man suffering from a severe headache, not through the use of medicines, but through prayers offered near the tomb, with the intercession of the Servants of God and the laying on of their relics, was immediately and completely healed. Therefore, if this is not a true miracle, at least a particular grace from the Lord, granted through the intercession of His Servants, cannot be denied, which is sufficient for our purpose. The second fact, that is, that no one knew about this event, is affirmed by the censor, but he does not provide proof. Indeed, the very reason why this witness was summoned by the advocate, namely, because he claims to have received two graces from the aforementioned eight religious who were killed, sufficiently demonstrates that his healing was already known before the legal proceedings were initiated; otherwise, he could not have been summoned by the advocate for this reason. There remains a third remarkable event, which is recounted by Witness 13, namely, a light and a column of incense, which were seen one night near the tomb of the Servants of God. I repeat here, says the advocate, that this is not the place to prove miracles. However, regarding the objections raised by the censor, I point out that it is not so easy to attribute this remarkable event to the imagination of Witness 13, for although he alone saw the light shining near the tomb, he later brought three other witnesses with him; who, as they observed what appeared to be a column of smoke, perceived a most pleasant fragrance. It should be noted that this religion to which the witnesses belonged makes this vision less likely to be a figment of the imagination. For these individuals, although not Catholics, were deeply moved and did not hesitate to attribute this remarkable event to a supernatural cause. In any other person, one might allow for the whims of the imagination; but not in those who, with the permission of the Lord, have been witnesses to the glory of these martyrs. Having considered all of this, I believe I have fulfilled the task entrusted to me, says the advocate. I have shown that the objections raised by the censor, carefully crafted by a very astute mind, cannot obscure the glorious reputation of the martyrdom that the Servants of God have attained through their precious death, and that these objections shine all the more brightly in the light of the facts themselves. From this, it becomes clear that the memory of these heroes should be adorned with the glorious fame of their martyrdom; and that there will not be lacking those who, trusting in their own needs, will commend themselves to their intercession in prayer, and who, relying on their patronage, will implore the most generous Heavenly Benefactor, and who, encouraged by their protection, will

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testify to the graces and miracles they have received from the Lord.

[*Latin ed. p. 446*]

446 FROM S, CONGREGATIONE CONCILII NAMURCEN. INDULGENCE, dated 19 September 1885. By summary petitions. The Most Reverend Pisani de la Gaude, Bishop of Namur, by decree of 3 November 1813, established the parish of Saint John the Evangelist within the cathedral chapter; and he decreed that a regular pastor should reside within the chapter, while the actual ministry should be exercised by a priest appointed by the Bishop, who would thereby become a canon and archpriest. However, this canon does not receive a pension from the government, as a canon, but certainly as the parish priest of Saint John. Indeed, the principal object of this innovation was to increase the number of titular canons to nine, so that the administration would not be burdened. Regarding the service of the choir, Bishop Pisani, in article 18 of the aforementioned decree, stipulated: The archpriest is not dispensed from the assistance of the choir, especially on Sundays and feast days. He must personally participate in the choir during his designated week; during that time, one of his vicars will celebrate the parish Mass in his place; which is in accordance with the Constitution of Benedict XIV of 19 August 1744. When a dispute arose between the canons and the archpriest regarding whether and how the canon was obligated to attend the conventual Mass and other choir services, the Sacred Congregation of Rites responded on 4 August 1843: "Affirmatively, in all respects, according to the form of article 18 of the episcopal decree of the year 1813." And when, most recently, the Bishop of Namur, during the pastoral visitation, inquired of the Sacred Congregation of Rites, among other things, whether such a canon and archpriest was obligated to the office of the choir, especially since he is often hindered by the duties of his pastoral office, the Sacred Congregation of Rites provided this summary of the matter.

[*Latin ed. p. 447*]

NAMUR. 447. The Holy See responded: "Unless he is actively engaged in the care of souls." Indeed, today, the canon of the parish of Saint John, besides tending to the parish, which has 3800 souls, also serves as the head, or dean, of a certain ecclesiastical district, and is obligated each year to visit numerous parishes and schools established within that district; and he must also preside over the meetings of his ecclesiastical district, held each month. Therefore, he earnestly requests an exemption from the service of the choir, while reserving the obligation to attend the choir on Sundays and holy days of precept, and to personally celebrate and offer the conventual Mass according to the norms of Article 18 of the decree of the year 1813. The Bishop of Namur not only consents to the aforementioned requests; but humbly implores that Your Holiness deign to grant a dispensation also

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to the successors of the Reverend Doctor orator. It is scarcely, or not at all, to be found in the future a priest who would consent to undertake the office of archpriest along with the office of canon.

A Synopsis of Disputed Points: The requests appear to be rejected. Since the archpriestal canonry was instituted, the Bishop of Piacenza ordered that the canon of the parish should attend, especially on Sundays and feast days, according to the Benedictine constitution; he did not exclude, but rather included, that he should also attend the choir on weekdays, according to the repeated responses of the Holy Office of August 6, 1843, and June 8, 1885. Hence, the orator requests that he be entirely released from the burden of serving on weekdays, and the Bishop also requests that this dispensation be extended to his successors as well. For it is known to no one that ecclesiastical discipline prohibits canons who have the care of souls from being absent from the choir, unless they are actively engaged in the care of souls in their own parish. For they alone have the privilege, established by the Council of Trent, Session 22, Chapter 3, and frequently approved by the Holy Office, as, for example, in Milan, on February 3, 1609.

[*Latin ed. p. 448*]

448 NAMURCEN. Quia, cum ministerium spirituale vacat, ut ipsi, quasi praesentes, in choro considerari possint. Deinde autem, eosdem in choro interesse debent. Sacra Congregatio, autem, graviter consciam curatorum onerare solet, ut non abusi privilegiis suis; quod significat, quantum sibi curae sit, canonicos curatos chorali servitio subesse. Quid iuvat appellare ad alia munera et officia – praeter parochialia quibus fungitur orator in themate, veluti caput seu decanus sui districtus? Quoniam haec nullum ius ad indultum praebent: ipsa enim vel sponte suscepta, vel ab Episcopo imposita, nullo modo recensentur inter officia parochi pro cura suae paroeciae propria, pro quibus tantummodo exercendis, canonicus a chorali servitio eximitur. PRECES EXCIPIENDAE VIDENTUR. Sed haec omnia, certe, possunt esse titulus ad gratiam; quae etiam suaderetur ex emolumento ab illis operibus pro ecclesia manante, ex commendatione Episcopi, atque ex ipsa canonicatus archipresbyteralis institutione et natura. Siquidem parochus S. Ioannis nullum lucrum nisi forsan honoris obtinuit ex "unione paroeciae ad capitulum." Denique durum videtur aut prohibere aut mulctare canonicum archipresbyterum propterea quod sanctis ac necessariis operibus vacet, et quotidie pro suo districtu adlaboret. Nimium autem, vel impossibile, credi potest, unam eamdemque personam indesinenter et parochiae et districtus et chori servitio subesse. Quibus aliisque praenotatis, quaesitum fuit quomodo oratoris preces essent dimittendae. RESOLUTIO. Sacra Congregatio Concilii re discussa sub die 19 Septembris 1885, censuit respondere: "Attentis circumstantiis, de

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quibus in casu, pro gratia oratoris durante munere."

[*Latin ed. p. 449*]

449. SEGNA. REGARDING THE ELECTION. August 22, 1885. Through summary petitions. COMPENDIUM OF THE MATTER. The Bishop of Segna presented a suppliant letter, stating: "In the election of canons to the office, which, according to our most recent convention, pertains to the chapter together with the Bishop, it often happens that some of the chapter members, when casting their votes, do not give them to any of the persons who are eligible, but cast them outside the designated area, where the names of the candidates are listed; either because they do not consider any of the candidates to be worthy of the canonry, even though they are already approved, or because, being excessively susceptible to distractions due to their age, they do not properly understand the matter and the manner of casting their votes. And these votes are called *perditae*, lost votes. Now, when this happens, the greater part of the votes, which are necessarily required for the validity of the election, must be counted only with respect to the chapter members who cast their votes in favor of a particular candidate; and should any consideration be given to those who cast their votes *perditae*, or rather, should the greater part be counted with respect to all those present, since all are present at the election and all, in fact, cast a vote? If the former is the case, it could follow that a canon to the office is elected by the votes of three or four chapter members, even though fifteen or sixteen votes were cast in the election." SYNOPTIC DISCUSSION. Indeed, there is a canon that is not less common, which states that the election of someone is considered valid when the greater and more sound part of the chapter agrees with him, "in whom all, or the greater and more sound part of the chapter, agrees," as stated in cap. Quia propter De elect. The greater part is considered to be that in which there is a greater number of electors with respect to the entire chapter present. Acts, Volume XVIII, page 29.

[*Latin ed. p. 450*]

450 SEGOVIEN. Here, those words are notably to be observed with respect to the entire present chapter. Indeed, the absence of legitimately summoned individuals does not invalidate the proceedings, as stated in chapter 19 of the same title; and likewise, it is not sufficient to have a majority or greater number of votes in comparison to others who have reported fewer votes, as is clear from chapter 48 of the same title. However, a majority of votes with respect to the entire chapter is required, as stated in chapter 50. If there are twelve voting members, as in VI: thus, if there are twelve present, at least seven votes are required; for an excess of one, or even half, a vote beyond the majority is sufficient, as is commonly held by the Doctors apud Reiffenstuel in the title "De elect." number 189, and De Luca

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De parodi, volume i, discourse 1, number 18. And because it is added, "and healthier"; therefore, a greater number is considered, by right, to be also healthier, according to chapter 57 of the same title, "De elect." – there – "For where a greater number is present, a better zeal is presumed." Cf. Fagnanum, chapter with the title "In cunctis," number 4, "Of those things which are done." Conversely, only two exceptions are found to be admitted. Zypaeo and Engel note, apud Reiffenstuel in the title "De elect." number 151, that in some places, the aforementioned strictness of the common law, requiring a majority of votes with respect to the entire present chapter for the validity of an election, is not observed, but rather, through long-standing custom, it has been held sufficient for the validity of an election if one has obtained a majority of votes with respect to others who have obtained fewer votes. Secondly, it is known that when the majority knowingly elects an unworthy person, the minority has a solid right of solidarity: "the power" of electing remains with the others, even if they are fewer, and these "represent the entire chapter," Reiffenstuel, cit. L, number 260; chapter "Dudum," 22, joined with the Glossa v. "In ordinibus"; chapter "Bonae memoriae," 23, "De elect." Indeed, Reiffenstuel notes in chapter I, number 261, that those very individuals are deprived of their own power by law; and therefore, it is not necessary to have a sentence or declaration made regarding their deprivation, but rather, the election made by the others immediately takes effect, as stated in chapters "Bonae memoriae" and "Dudum" concerning elections. Whether these exceptions can have a place in the matter of deciding has been left to the judgment of the Most Reverend Fathers; while concerning custom...

[*Latin ed. p. 451*]

SEGOVIA. In the year 1851, not a single word was written in the Bishop's letters concerning this matter. Furthermore, although those chosen may be unworthy and, by the very law, are deprived of that office; nevertheless, the power of choosing, and the right of all, is established in the lesser part; yet it is required that the election of an unworthy person has truly taken place, or, as stated in chapter 7 concerning elections, that the election, in its external form, subsists and has truly followed; because the words of the penal law must be understood with effect, as stated in chapter "Relatum De clericis, non resia"; and especially it is required that it has been done knowingly, as stated in chapter "Innotuit 20," and in the chapter with the Glossa joined to Winchester, under the title "De electionibus." Having considered these points, the question was raised: what should be answered to the Bishop's request?

RESOLUTION. The Sacred Office, having knowledge of the Council's cause, decided on August 22, 1885, to respond: "The election is completed by votes that are not relatively, but absolutely, in the majority; and it should be written to the Bishop to prevent the abuse of distributing votes among

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outsiders; henceforth, the proper procedure of Leo X, which begins with 'Cum dudum,' should be followed."

AVIGNON and VALENCE. Regarding the matter of the translation of a pension, on September 19, 1885. The details of this case have already been presented in Volume XVII, page 129. At that place, it is also evident to the reader that, before the Sacred Congregation, the question was proposed on May 10, 1884, under two formulas of doubt: 1. Is there a basis for the translation of a pension in favor of the seminary of Valence in this case? And to the extent that it is affirmative. 2. Is there a basis for the restitution of the fruits of five years of the same seminary in this case? The Sacred Office responded: to the first, "No"; and to the second, "Provisionally, based on the first." However, the Bishop of Valence, feeling aggrieved by such a decision, appealed, and, having obtained the benefit of a new hearing, the case was presented again.

SUMMARY OF THE FACTS.

[*Latin ed. p. 452*]

452 AT VENIONEN. AND VALENCE. A Synopsis of the Dispute. The advocate divides his arguments into three main points; in the first, he strives to prove that the pension in question was not established by the Bishop of La Gaude, but by Emperor Napoleon; in the second, he asserts that the place of transfer of the pension in question is the seminary of Valence; and he endeavors to demonstrate this with numerous arguments. In the first argument, which he derives from the foundation of the bursary, or pension, he reiterates what he affirmed in the first section; that is, he maintains that the founder of the pension was not the Bishop of La Gaude, but Napoleon, who wished to imitate the first founder, the Bishop of Lambert, and, according to his intention, established the pension. Indeed, the aforementioned Emperor, the advocate states, pleased with the title of benefactor, left the name of the founder to the Bishop of Lambert, because the former had conceived of the pension for the benefit of his clergy, and in his will, he had decreed that the clergy designated for the pension by the Bishop should reside in a seminary determined by the Bishop; that is, according to the judgment of the Bishop, the advocate explains. He asserts that this disposition of the founder must be observed entirely, citing Canon 5 of Session 25 of the Council of Trent, concerning reform. If this were not the case, he says, it would follow that, on the one hand, the law of the foundation established by Napoleon would be observed; but, on the other hand, it would not be observed; because to one Bishop the right of nominating a cleric for the benefit of his diocese would remain fully intact, while to another, only the right of sending a cleric to a diocese that was not his own would be granted. From these points, it follows that

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the pension in question must be transferred to the seminary of the Diocese of Valence. And indeed, the intention of Emperor Napoleon appears from the fact that he always called the Bishop of Lambert the founder, so that it would be known to all that his dispositions should be observed, even after the unjust law of November 2, 1789. THE RIGHTS OF THE BISHOP OF VALENCE.

[*Latin ed. p. 453*]

AVIGNON AND VALENCE. 453 He seeks to confirm what is asserted by citing an interpretation of law 92 ff. of the *Hebdomada*, title 5, in which, when a certain woman was established as heir by means of an endowment, and her father was substituted for her, and after this woman was killed, a rumor spread that her daughter had also died. However, a new endowment was established for the heir, and when it was later discovered that the woman was still alive, the Emperor declared that the inheritance belonged to the woman, but that she was still obligated to fulfill the provisions of the previous will. The advocate argues that the case was handled in no other way. Charles of Pisa, from La Gaude, explained to Napoleon, his uncle, that his father had donated certain property to his church, with the stipulation that the then-Bishop should grant a pension to a cleric, to be designated by him, for his education in a college or seminary chosen by the same person; but when the funds were no longer available, in order that the Bishop of Lambert should not be rendered useless, the Emperor believed that he should assist him, and therefore assigned revenues so that they might be distributed according to the will of the donor. He argued that this did not contradict the inscription on a public debt in favor of the metropolitan seminary of Avignon, because at that time there was no seminary recognized by law in the diocese of Valence. Indeed, Napoleon, First Consul, by decree of March 13, 1804, had stipulated that seminaries should only be established as metropolitan seminaries, although later, in 1813, it was also permitted to establish diocesan seminaries. He supports this with the provisions of the Tridentine Council, Session 23, De Reform, chapter 18, where the Holy Synod decreed that each cathedral, metropolitan church, and other major churches should be obligated to "support, and religiously educate, and instruct in ecclesiastical disciplines" a certain number of boys from that city and diocese in a college near those churches, or in another suitable place chosen by the Bishop; but that the Synod should only permit the Bishop to establish a seminary outside his own diocese, if the churches were suffering from such poverty that a college could not be established in those places in any way. But in the diocese of Valence, there was a large seminary.

[*Latin ed. p. 454*]

454. AVIGNON AND VALENCE. These matters were brought together,

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sufficiently clearly, concerning all that is required for properly instructing youth under the watchful eye of the most astute Pastor, who, however, in this case, was constrained to nominate his cleric to attend a seminary outside of his jurisdiction, and thus, in some way, to withdraw him from the Pastor's care and vigilance. Finally, the patron stated that everything should be confirmed according to the canon of law, which states that every interpretation must be made in such a way that it does not appear that anyone is taking away what has once been granted, according to the tradition of Lotter, *Lib. 2, Quaest. 8, n. 49*. Furthermore, according to the law of Lucius Titius, *ff. 22, De leg. et fel.*, and Z, *lib. 31, tit. 1*, "the burden of proving that the deceased changed his will belongs to him who 'refuses the trust'." Therefore, the Avignon court should prove that the Bishop of La Gaude had changed his will, or that he no longer wished to observe the dispositions and foundations of his predecessor, the Bishop of Lambert, so that he could legally refuse the transfer, of which we are speaking; but, the advocate stated, it is clearly evident from what has been said that the place for the transfer of the pension is in favor of the seminary of Valence. Finally, concerning the third point, it is maintained that the place for the restitution of funds is in favor of the same seminary of Valence, from the time when the student did not attend the seminary of Avignon. And this, he asserts, is a legitimate consequence of the foregoing. For, if a transfer of the pension is to be made, it is necessarily required that the sums improperly received be restored. Indeed, the canon of law states that "no one should profit from another's injury or loss," according to Rule 48 of the law, in 6°, and according to the law of natural law, 206 ff., of the law. Therefore, since it has been determined that the seminary of Avignon collected pensions and did not disburse them in favor of the cleric of the ancient diocese of Saint-Paul, it is clearly evident that they must be restored to the seminary of Valence, which disbursed those very sums in favor of the clerics of that diocese. With these points noted, the proposals were to be considered.

[*Latin ed. p. 455*]

AVIGNON. 455 AND VALENCE. Doubts. I. Whether one should adhere to or depart from the decisions made in the first doubt in this case. II. Whether one should adhere to or depart from the decisions made in the second doubt in this case. RESOLUTION. The Sacred Congregation of the Council, after deliberation, on September 19, 1885, decided to respond: Regarding the first: One should depart from the decisions. Regarding the second: One should adhere to the decisions. (1) RIMINI. FUNERALS. On August 22, 1885, and January 23, 1886. Session 25, Chapter 16, concerning Reforms. SUMMARY OF THE FACTS. On December 17, 1884, the Archbishop of Rimini presented the following to the Sacred Congregation: In that city, there are numerous families who have family tombs in another church, different from their own parish church. This custom existed during

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a time when burial in a public cemetery was not compulsory, namely: after the funeral in the parish church, the body was taken for burial to that church in which the family tomb was located, and the pastor of that church had the right to half of the proceeds from the funeral. Now that civil law prohibits burial in churches, the Archbishop asks whether this custom can be maintained. Synopsis of the Discussion. WHAT IS OPPOSED TO THE CUSTOM. First of all, it seems that these funeral proceeds should not be due to the pastor of the church. (1) From newly observed circumstances by the procurator of the Bishop of Valence, the first modified sentence of the Fathers of Emorum Jude was seen to be consonant. For while they had resolved that it was not proper to support the proper Clericum of Clericum, to religiously educate him, and that the Archbishop of Valence should strictly adhere to ecclesiastical discipline in his own diocese, the most recent sentence of the ecclesiastical court of Valence admits the transfer of pensions, the other sentence remaining in force.

[*Latin ed. p. 456*]

456. BURIAL. And indeed, according to common law, all the expenses of a funeral should belong to the parish priest of the deceased, who administered the sacraments to him and conducted the funeral in his church. If any portion of the expenses was assigned to the parish church where the burial took place, this could only be by privilege, and not by any other title than that derived from the burial itself. However, after public cemeteries were established and it was forbidden to bring the bodies of the deceased into churches, the reason for this privilege also seems to have ceased. As stated in De Angelis, title De sepul., book 3, Decret, no. 3: "Indeed, today burial in churches is generally forbidden, with the ecclesiastical authority concurring with the civil authority, and therefore, since there is no longer a choice of burial place, those privileges granted to non-parochial churches for burial are rendered useless." Therefore, if the body is no longer taken for burial to another church or parish, that church will no longer have the right, as before, to claim half of the funeral expenses for that burial, which no longer takes place. This right must be understood as an accessory and intimately connected with the right of burial; as stated by Berardi in Ius eccl. univ. de potest. par. ratione funer. An accessory, by its very nature, follows the principal thing, according to that well-known principle of law: "Those things which have the nature of accessories are extinguished when the principal thing is extinguished." Therefore, since it appears from the above that there is no longer any title by which the parish priest of the church where the burial takes place can claim those expenses, especially since he has no part in the present arrangements or in the funeral itself, it would seem that all the expenses should be ceded to the parish priest of the deceased. However, it would seem to be more justly retained in the case of someone who has purchased a burial plot in the public cemetery, both

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for himself and for his relatives. For by acting in this way, he may have shown that he has replaced the traditional family burial place with this public burial plot. Just as, formerly, if someone had their own burial place in a certain church, and then chose another place elsewhere, the former...

[*Latin ed. p. 457*]

ARIMINEN. 457. The church was losing its privileges and rights pertaining to the burial ground; and it appears, in these circumstances, that the parson of the burial church no longer receives the customary fees for burials. WHAT FAVORS THIS CUSTOM. However, on the contrary, it seems that the parson of the burial church cannot be deprived of the aforementioned right in either case; and the arguments drawn from the law of reason are to be considered with caution, since ecclesiastical regulations can be opposed to them. Indeed, in the edictal law issued by the Sacred Congregation of Councils in the year 1817, which absolutely prohibits anyone, even if he has been granted a privilege or is using a pagan tomb, from burying bodies in churches and parish churches, the rights of the parsons are expressly preserved. For it is stated there: "The parochial revenues which are established, or which have been acquired by legitimate custom, are to remain in force, and this new regulation does not intend to make any distinction regarding them." Furthermore, the constant opinion of the Sacred Congregation seems to be that, after the erection of public cemeteries, no prejudice should be understood to have been caused to the rights and privileges of the burial church. Therefore, even if the right of burial has been removed, it still appears that something remains regarding the collection of fees for funerals. Indeed, strictly speaking, it has not been the right of burial that has been taken away, but only the place of burial that has been changed materially and physically. For example, in Ariminen, in the matter of burials and funeral fees of May 14, 1825, it is noted that cemeteries have been established in place of the individual churches' burials for reasons of public health; and therefore, the church, which previously possessed the right of burial in its own cemeteries, is now expressly stated to be able to exercise that right in the public cemetery; therefore, it is not the right of burial that has been abolished, but the place of burial that has been changed. Similarly, in Aesina, in the matter of funeral fees and the restoration of revenues of November 26, 1864, it is stated: "The Sacred Congregation, with the erection of cemeteries, has changed only the place of burial materially and physically, but not the right of burial, which, on the contrary, it considered to have remained intact." And so it was decided in Forliven, January 26, 1833, in Portuen and Centumcellar, March 28, 1835, and in another case in Forliven.

[*Latin ed. p. 458*]

458 ARIMINEN. Concerning the law of burial, September 16, 1871,

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where it is stated: "It is not said: 'Those churches which previously held the right of burial now exercise that right in the public cemetery, which certainly does not prevent them from receiving the profits from burials, and from performing the funeral rites over the bodies.'" Nor is it otherwise, as in the Syracusana concerning burials, February 24, 1872, §. Quibus. Nor does anything pertain to the rights of the parish priest who buries, concerning one who has caused a burial vault to be constructed in the cemetery, for the reasons mentioned above also apply in this case, and everyone always has the power, after ten years, or even a longer time, to conceal the ashes of their ancestors in a family tomb. To these things, it must be added that the aforementioned custom regarding the division of funeral profits has been in force from ancient times. Customs of places, which have been properly introduced, prescribed, and approved, are often considered by the Sacred Congregation, indeed, they obtain the force of law, according to Reiffenstuel, book 2, Decretals, title 26, number 140; Sacred Congregation, in Romana, March 24, 1821, §. Haec. And this is also verified, although the law resists prescription, provided that the space of forty years of frequent acts, with a title, or an unmemorable time, is sufficient, according to the text in chapter 1, on Prescription, in 6, De Luca de Benef., discussion 30, number 11; Reiff., loc. cit., numbers 121, 147, and 164. These things are verified in a quite particular way in the reception of funeral profits. For in this matter, secular customs of places are very often indulged. See, Chapter on Certain Matters concerning Burial, Rota, decision 376, number 1, part recent; and according to these, questions are often resolved by the Sacred Congregation, as can be seen in Fabrianen, Fourth concerning funerals, March 10, and April 7, 1731, and February 9, 1732, Camerinen. Burials, December 18, 1819, to 2, Dubium. From these considerations, the following question is to be resolved: Does the parish priest of a church that simply buries have a right to half of the funeral profits, or does the family...?

[*Latin ed. p. 459*]

ARIMINEN. 459. Quid si, vel etiam si, sepulcrum ematur in coemeterio publico? Ad hanc quaestionem, Sacra Congregatio, die 22 Augusti 1885, respondit: "Audiantur et sint scripta collegialiter, tum parochi, tum rectores ecclesiarum tumulantium." Episcopus, qui mandata emittit, relatus est a parochis civitatis, excepto uno, quod consuetudo, quae ad rem pertinens viget, veritati conveniat: scilicet, ut exponitur, etiam ex gratia vel privilegio, Ecclesia quae sepulcrum gentilitium habet, non habeat ius ad ullam partem emolumentorum funerarium. De rectoribus vero duarum ecclesiarum tumulantium, Episcopus dixit, quod alii oppositionem ad observantiam parochis faciunt; alterum autem profiteri propriam subiectionem ad resolutiones auctoritatis. Aliae quaedam argumenta adducebantur, tum pro parochis, tum pro ecclesiis tumulantibus. Deinde, idem propositum

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fuit ad dubium enodandum. RESOLUTIO. Sacra Congregatio, post deliberationem die 23 Ianuarii, censuit respondere: "Affirmativum in omnibus." Ex QUIBUS COLLIGITUR: I. Praxis sacrorum Congregationum sit ita ut ex erectione coemeteriorum publicorum nullum discrimen inferatur ad privilegia et iura antea quaesita. II. In hoc, praxis haec roboratur per resolutionem datam; quia momenta rationum a parochis adducta, quae recessum a praxi suggererent, non visa sunt; cum similia argumenta ubique verificantur. (1) (1) Confer Vol. I, p. 85 et Append. V, circa ius funerandi, relat. Vol. I, p. 124. Recol, etiam Vol. V, pag. 124, 562, 598, Vol. VII, pag. 25, Vol. VIII, 528, Vol. IX, 20, Vol. XII, 346, Vol. XIII, 416.

[*Latin ed. p. 460*]

460 FROM THE DECREE of the Most Holy Congregation of the Holy Roman Inquisition, concerning the validity of marriages when there is doubt as to whether two non-Catholics, or whether either one of them, has been baptized. Most Reverend Prince. — The Bishop of Savannah reports that among the difficult cases to resolve that occur in the ecclesiastical provinces of these United States of North America, and also in this diocese, is the following. It frequently happens that two non-Catholics enter into marriage with each other, and it is unknown whether either or both of them have been baptized. In such marriages between two non-Catholics, or without a dispensation between one Catholic and one non-Catholic, entered into in none of our dioceses, there is no impediment of clandestine marriage. After such a marriage has been contracted, it often happens that one of the parties abandons the other. After some time, the separated parties frequently enter into other marriages, with one party remaining. I know of a case in which, after examining the evidence for and against, there is doubt as to whether baptism was conferred on either or both parties; in such a case, with this doubt and without a dispensation, should the validity of the marriage be considered until it is established that it was invalid? However, lacking other evidence on either side, I ask whether, with regard to the validity or nullity of the marriage, the conferring or non-conferring of baptism, when unknown, should be determined by the principle of presumption. In doubtful cases, the Most Reverend Archbishop Patrick Henric affirms this. In his moral theology (treatise XI, no. 48), he states: "If there is no certainty about the baptism of the spouse, and no certain testimony can be obtained, one should lean towards the presumption of baptism and the validity of the marriage, to which the indications and circumstances are favorable." If the esteemed Henric is correct, I further inquire whether, when the conferring of baptism is unknown, the principle of presumption should be properly applied in the following cases: 1. If the non-Catholic parties have parents belonging to a sect that rejects baptism, then baptism should not be presumed. 2. The same should be resolved if the parents belong to a sect that does not admit the baptism of infants, or in which it

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is not conferred except on adults, as is the case in the Baptist sect, after the age of thirty.

[*Latin ed. p. 461*]

DECREE 461, 3. It must also be determined in the same manner, if the parents, while still living, have declared that they do not wish to belong to any sect, and that they honor the Supreme Being rather through honest morals, as they say, than through any particular form of worship.

4. If the parents belong to a sect which considers baptism to be necessary, or in which it is at least ordinarily administered, and if the same parents have been zealous in their sect, baptism should be presumed. But what if the parents have been indifferent in their sect, or if they belong to a sect which does not reject baptism, but does not consider it necessary, and in which it is not ordinarily administered? Should baptism be presumed in either of these cases, or in neither?

5. If, according to the sect and disposition of mind of only one parent, as mentioned above, the presumption favors baptism, and if, in fact, that parent has clearly and undoubtedly had the primary role in the upbringing of the child, baptism should be presumed. The same must be determined if, after investigation, it is unknown or not sufficiently clear which parent has had the primary role; for in matters concerning marriage, it is presumed that a marriage once begun is valid as long as both parties consent. But what if it is certainly known that the parent who has, in fact, and undoubtedly, had the primary role in the upbringing of the child, does not favor baptism in their sect and disposition of mind, while the other parent's sect and disposition of mind favor baptism?

6. In the case where no presumption favors baptism, the following rule must be applied: an action is not presumed, but must be proven. The application of this rule may more appropriately take place in these United States, where there are many non-Catholics who pay little or no attention to the baptism of their children, than in many other regions. The aforementioned questions are therefore presented as primary, so that a standard may be established from their solution, according to which it is possible to proceed safely, especially in these cases.

I. Where, from two parents who are non-Catholic and separated as mentioned above, one wishes to be received into the bosom of the Church, and either wishes to or has already entered into marriage with a Catholic.

2. Where a Catholic wishes to be joined with a non-Catholic, as mentioned above, or where a Catholic is already joined with a non-Catholic, and desires to receive the sacraments.

On Feria I, August 1, 1837. In the general congregation of the Holy Roman and Universal Inquisition, held before the Most Eminent and Reverend Cardinals, Inquisitors General for the matters of faith, after the afore-

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mentioned doubts were presented, and after the vote of the Most Reverend Consultors, the Most Eminent Cardinals decreed.

[*Latin ed. p. 462*]

462 DECREE Regarding 1. Affirmative, after a thorough investigation in each case*. Regarding 2. Namely: Whether, while the conferring of baptism is unknown, the principle of presumption in matters concerning the validity of a marriage contracted according to due form, can be applied in the following articles? — They responded: Affirmative with regard to the first, second, and third articles, and with regard to the first part of the fourth and the first part of the fifth number; but in the latter article, after the words "has had parts," the following should be added: "unless the other spouse is positively known to be opposed to the conferring of baptism, baptism is to be presumed." In the remaining cases mentioned in the second part of the fifth number, recourse must be had to the Holy See, after setting forth all the circumstances of place and persons, and other matters relevant to the case. Regarding 6. Provision is made in the foregoing. I. MEMORANDUM OF THE SACRED CONGREGATION FOR THE HOLY OFFICE AND THE UNIVERSAL INQUISITION, No. 8. CONGREGATION OF LAUSANNE AND GENEVA. Concerning certain general Indulgences granted for the acquisition of Indulgences. The Most Reverend and Reverend Monsignor Gaspar Mermillod, Bishop of Lausanne and Geneva, while still Bishop of Hebron and Apostolic Administrator of Geneva, presented the following requests to the Sacred Congregation presiding over Indulgences and Relics, for the granting of certain general Indulgences for the acquisition of Indulgences: I. That the condition of visiting a church, often prescribed for the acquisition of Indulgences, may be fulfilled by persons of both sexes living in community and under a rule, by visiting their domestic chapel. II. That the infirm or those weakened by old age, living in community and under a rule, who are unable to visit churches or chapels, or to perform other acts prescribed for the acquisition of Indulgences, may nevertheless be able to acquire Indulgences, by performing other pious works prescribed by the confessor. III. That in the case where some moral impediment exists, it should be left to the prudent judgment of the confessor to determine whether, in order to acquire a certain Indulgence, the visit to a particular church (e.g., a religious house or a parish church), which would normally be required, may be substituted by the confessor's judgment with another pious work (e.g., a visit to another church). IV. That if any Indulgence is granted to the faithful, it should be—

[*Latin ed. p. 463*]

FROM THE SACRED CONGREGATION OF INDULGENCES, 463: To those who receive the blessing from the priests, especially the newly ordained; and 2nd, that some indulgence be granted to those who piously

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and devoutly assist at the First Mass of newly ordained priests. After the responses of the Eminent and Reverend Cardinals in the Congregation held on December 18, 1885, in the buildings at Vatican, the Most Holy Lord Pope Leo XIII, in an audience held by the undersigned Secretary on January 16, 1886, graciously approved the aforementioned requests in the following manner: To I, approved. To II, approved. To III, disapproved. To IV, to the first part, disapproved; to the second part, He deigned to grant, with the due reservations to be observed, a plenary indulgence to the priest celebrating the First Mass, and to his relatives up to the third degree inclusive, who are present at the same Mass; and to all other faithful present, an indulgence of seven years and forty days. This is valid forever, without any need for a brief. Contrary opinions notwithstanding. Given at Rome, from the Secretariat of the Sacred Congregation of Indulgences and of Holy Relics, on January 16, 1886. m m m m I. B. CARD. FRANZELIN FRANCISCUS DELLA, Prefect. VOLPE, Secretary. FROM THE 8TH CONGREGATION OF RITES OF NAPLES: Concerning the beatification and canonization of the Venerable Servant of God, Francis Mary Castelli, a cleric of the Congregation of Clerics Regular of Saint Paul, the Barnabites. At the request of the Reverend Father Ignatius Pica, a priest of the Congregation of Clerics Regular of Saint Paul, the Barnabites, Postulator of the cause of beatification and canonization of the aforementioned Venerable Servant of God, Francis Mary Castelli, the Eminent and Reverend Cardinal Lucidus Maria Parocchi, Promoter of the same cause, proposed the following question in the Ordinary Sacred Rites Assemblies held at Vatican on the aforementioned date: Whether the judgment of the Delegate Judge, from the Most Eminent and Reverend Archbishop of Naples, concerning the aforementioned cult of the Venerable Servant of God, or concerning the obedience rendered to the decrees of His Holiness Urban VIII, should be confirmed in this case, and to the effect of what is being discussed.

[*Latin ed. p. 464*]

464 FROM THE HOLY CONGREGATION FOR THE RITES: Furthermore, the Most Reverend and Venerable Fathers, Prefects of the Sacred Rites, having duly considered all matters, and having heard the voice and the written account of the Most Reverend Father Augustine Caprara, Promoter of the Holy Faith, have decided to write: It is established by the Decrees of His Holiness, Pope Urban VIII, on the 17th of December, 1885. And on that very day, these matters were faithfully reported to the Most Holy Lord, our Pope Leo XIII; and His Holiness deigned to approve and confirm the Rescript of the aforementioned Holy Congregation. D. CARDINAL BARTOLINI, Prefect of the Sacred Roman College. L. 8. S. LAURENTIUS SALVATI, Secretary of the Sacred Roman College. FROM THE HOLY CONGREGATION OF THE INDEX: DECREE, on the Feast of the Vth Day of April, 1886. The Holy Congregation of the Most Eminent and Reverend

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Cardinals of the Holy Roman Church, by order of the Most Holy Lord, our Pope Leo XIII, and the Holy Apostolic See, having been appointed to oversee the Index of books of pernicious doctrine, and to determine their condemnation, suppression, purification, or permission throughout the Christian Republic, has ordered and does order that the following work be placed on the Index of Prohibited Books: The work by the Most Holy Sacred Congregation, condemned and suppressed by Decree on the Feast of the IVth Day of March, 1886. Henri Des Houx. *Souvenir d'un Journaliste Français à Rome*. Paris, Paul Ollendorff, Publisher, 28 bis, Rue Richelieu, 1886. Given in Rome, on the 1st Day of April, 1886. Fr. THOMAS MARIA, Bishop of Sabina. Card. MARTINELLI, Prefect. Fr. JEROME PIUS SACCHERI, of the Order of Preachers, Secretary of the Holy Congregation of the Index.

[*Latin ed. p. 465*]

465 FROM THE PROCEEDINGS OF THE DIOCESAN SYNOD OF CEPHALUDIA. PROVISIONS REGARDING PARISHES. May 16th and December 12th, 1885. Session 24, Chapter 12, concerning Reforms. In the year 1883, the parish of Geraci Siculo being vacant, a priest named Puccio was appointed as administrator. The Bishop hesitated to call a competitive examination, but on January 24th, 1884, compelled (as he himself states) by the petition of the priests and the repeated requests of the local municipality, he petitioned the Most Holy Father for the priest Alesso, so that he might be appointed to the parish without a competitive examination. However, the Bishop continues: "When other petitions favoring the priest Puccio reached me, I considered it best, after having abandoned the path of grace, to provide for the parish according to the norms through a competitive examination. I therefore immediately instructed my representative in the city to refrain from requesting a dispensation from the examination in favor of the priest Alesso, and shortly thereafter, on February 13th, I published the call for the examination. Two candidates presented themselves, namely Puccio and Alesso; but on the day assigned for the examination, namely March 3rd, only the priest Puccio appeared, while the other sent to the Curia a medical certificate, which attested that he was confined to his home by illness, and also requested that the examination be postponed. The priest Puccio, having heard of the petition made to the Most Holy Father in favor of the priest Alesso, suggested to the Bishop that it would be very opportune to grant the requests of the priest Alesso, and to postpone the matter, so that there would not be two parish priests; namely, Alesso through a dispensation from the examination, and Puccio by undergoing the examination then scheduled. But the Bishop asserted that he had long instructed his representative in writing to refrain from requesting a dispensation for the aforementioned Alesso.

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COMPENDIUM OF THE FACTS. Acts, Volume XVIII, page CC XIV, 30.

[*Latin ed. p. 466*]

466 CEPHALUDEN. Postquam desisteret, et cum certior factus esset quod gratia non esset expetita, voluit ut examen celebraretur; in quo approbatus est sacerdos Puccio, qui duos post dies, per Episcopali bullam ad paroeciam nominatus, possessionem eiusdem capiebat die 9 mensis, omnibus loci sacerdotibus praesentibus, ipsoque Alesso, qui in Curia protestationem iam contra factum, emiserat. Paulo post autem, cum electus parochus a Gubernio civili regium placet expostularet, hoc obtinere haud valuit, opponente civili officiali, esse apud se bullam Pontificiam, qua paroecia loci Geraci conferbatur sacerdoti Alesso. Itaque contra valorem et effectum huius bullae, reclamante sacerdote Puccio, praesens controversia enata est. Episcopus rogatus retulit, ex nuperrimis informationibus, quae magis veritati consonae sunt, sese criterium immutavisse quoad sacerdotem Alesso, qui omnino meritis caret ad consequendam paroeciam. Scandalum autem fieri quatenus removeretur sacerdos Puccio: Bullam pontificiam illicitis artibus obtentam fuisse ab Alesso cum Agente Romae. Attamen rem facile componi posse, ait Episcopus', sanando, quatenus opus sit, electionem a Curia episcopali peractam. (1) Disceptatio Synoptica IURA SACERDOTIS ALESSO. In primis, sacerdotis Alesso patronus animadvertit, affectiones beneficiorum, sive tacitas reservationes, tunc locum habere, cum Summus Pontifex (1) Causa haec proposita fuit die 16 contrariam colligit sententiam ; nam es Maii : sed dilata est pro nova informatione assumenda ab Archiepiscopo panoramitano : qui censuit Episcopum Cephaluden, haud intellexisse, dum a con- addendo : dispensationem a concursu pro Sac. Ales- his de rationibus sapientiae Sanctitatis so, adire Apostolicam Datariam, Bullam Vestrae submitto, quod esset valde utile, si ope dispensationis a concursu, Archi- presbyter tantum voluisse, populoque accepta. Et ideo nil mirum, ait Alesso, quod Rom. Pontifex gratiam in- simul cum formula de more facultativa et remissiva. Sacerdos vero Alesso simul beneficium contulerit.

[*Latin ed. p. 467*]

CEPHALUDEN. 467. When a prelate applies his hand, or expresses his will regarding the provision of a benefice, and consequently, due to the supreme authority of the Pontiff and the reverence due to him, the hands of those below are so bound together that they can no longer, for that occasion, intervene in the granting of the benefice, and whatever they presume to do concerning it is subject to incurable nullity. To induce this state, the patron states, it is not necessary that the act of provision be completed and perfected by the Supreme Pontiff, but it is sufficient that he has begun, with regard to that same provision, to know and deliberate. For this is suggested by the very words of ”application of the hand” and ”affection,”

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which indicate a matter begun, even if not perfected, and is required by the reverence due to the Supreme Pontiff. Once, however, the provision of the benefice is perfected, the actions of those below are null, the patron states, because they would be subversive of the pontifical grace. Indeed, as Reiffenstuel states in *Lib. 3 tit. 5 §. 14 num. 407*: "The Pope, by applying his hand, is considered tacitly and by the very act to revoke the granting of the benefice to himself; and thus, by the nullity of the act, he binds the hands of those below, so that they can no longer, for that occasion, intervene in its granting." This is consistent with Ferraris, *v. Beneficium*, art. 8, num. 6*, and the Rota, before Emerix, Decision 494, § H; before Lancetta, Decisions 858, §§. 2 and following; and before Ratto, Decision 3, num. 3: "He who applies his hand is properly said to begin the business to be performed, but not to perfect what has been begun, as is also suggested by the word 'affection,' derived from the verb 'to affect,' which does not imply a perfect and completed matter, but rather denotes it only in its beginning... And this is wonderfully suggested by the fundamental reason of the affection, which resides in the reverence due to the Pope by those below, whom it is improper to interfere with in that business in which the Supreme Pontiff has applied his hand; which reason, indeed, seems to be verified only at the beginning of the grace, after he has declared his will regarding the provision of the benefice..." With these premises established, the patron observes that the Supreme Pontiff...

[*Latin ed. p. 468*]

468. CEPHALUDEN. The plaintiff asserts that the ecclesiastical authority, concerning the benefice in question, undoubtedly exercised its power, not only by receiving the petition presented on January 24, 1884, and by becoming aware of the grace requested by the priest Alesso; but also by granting that same grace through apostolic letters dated February 9 of the same year; and therefore, that the aforementioned benefice, unless it had been affected from that day, had acquired a perfect and legitimate right, and that the priest Alesso had obtained the execution of those letters, which had been entrusted to the Bishop. From these facts, the plaintiff argues that any subsequent actions taken by the Bishop are void. Furthermore, according to the plaintiff, the Bishop wrongly objected that the apostolic letters had not been presented to him by the priest; and that the silence of his own agent proved that the grace had not been granted. Since the request for the grace had been made with the least possible insistence by the priest Alesso, but had been presented to the Supreme Pontiff by the Bishop himself, through his agent, it was the agent, and not the priest, who should have informed the Bishop of the granting of the grace, the plaintiff argues. Moreover, the plaintiff asserts that the agent informed the notary or chancellor of the Bishop of the granting of the grace, and subsequently informed the Bishop himself, through the telegraph, before the appointed

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date of March 3. Furthermore, the plaintiff observes that the Bishop, who had been challenged by the exercise of the power of the Supreme Pontiff, should not have been satisfied with the simple silence of his agent to prove the rejection of the grace, but should have obtained certainty regarding that rejection. After these observations, the plaintiff noted that the effect resulting from the exercise of papal power in this case differs from a reservation, because this difference also affects those who are unaware: for it is inferred from Extr. Romanum, De praeb. "For after the Supreme Pontiff has exercised his power, no one else, except him, can dispose of it for that occasion; and he adds a sanction, deciding that, from now on, it shall be null and void if anyone, knowingly or unknowingly, should attempt to interfere with it." And in agreement with this, Ferraris v. Be-

[*Latin ed. p. 469*]

CEPHALUDEN. 469, not fictitious, article S, number 3, with Reiffenstuel, L. 3, T. 5, §. 14, number 412, to demonstrate that "affection affects even the ignorant," but not simple reservation," and that this holds with greater force when the Apostolic letters, with the aforementioned clause added, are present. Regarding the opening of mouths, the advocate stated that even if there had been deception or fraud in the case, it would not follow that the collation made by the Bishop would be valid, since *Extr.*, cited above, states that "whatever has been knowingly or unknowingly attempted is invalid and ineffectual," "even if" the Apostolic letters concerning the provision of a benefice... "from another," for which reason they do not produce effect, as Reiffenstuel also teaches in the aforementioned passage, §. 410. And the Rota, before Lancetta, in Decree 858, §. 12, states: "Although grace is null and ineffectual, affection does not cease." And before Ratto, in Decree 3, §. 5, it is said that this holds "even if grace was null and > surreptitious." But, setting these aside, the advocate contends that deception or fraud is entirely absent in the present case, and that the things reported by the Bishop are entirely contradictory. Indeed, in the petitions presented to the Supreme Pontiff on January 24, 1884, the priest Alesso was represented as a person who, both in morals and in ability to preach the word of God, had managed to gain the affection and esteem of the people. Therefore, his election as Archpriest in the aforementioned parish would be beneficial. However, in the information sent to the Sacred Congregation of the Council, it is asserted that the same priest does not deserve to be chosen as a pastor of the people; rather, he is more suited to destroying than to building up. And he could not easily be excused from the suspicion of simony, due to the things that were done through an agent in Rome, in order to secure the benefice, while at the same time he pretended to register among the candidates for the competition, as the Bishop stated, having already been invited with better intentions. However, the advocate stated that these accusations are devoid of any foundation, and concluded

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that there is no reason to give more credence to the second than to the first account: rather, the truth is to be found in the first petitions and in the prayers presented to the Supreme Pontiff by the Bishop.

[*Latin ed. p. 470*]

470 CEPHALUDEN. [The defense] maintains that the allegations are entirely unfounded, especially concerning the second petition and the information transmitted by the Most Holy Office. To support this, the defender argues that the error in the first petition and prayers is completely implausible, since, on the one hand, it concerns a priest known to all, who has publicly and with the greatest *summa cum laude* exercised his sacred ministry for forty years; and, on the other hand, it involves a Bishop who has governed the diocese for twenty-five years, and who, therefore, should know his flock well, and it would not be easy to consider a good shepherd to be a wolf. In this case, the defender insists that simony is entirely absent, because the alleged agreement with the agents occurred after the competition had already been announced, and that the competition was not announced until February 13th, while the grace had already been granted by the Supreme Pontiff for four days, namely, from February 9th.

IURA Sacerdotis PUCCIO. Regarding the case of the priest Puccio, the defender notes that the first question pertains more to the facts than to the law, since it is argued that, against Apostolic letters, an appeal must always be granted if it is established that they are tainted by fraud or deception, as is stated after the most evident provision of the law, as the *Capitula Super Litteris de Rescriptis* teach in six hundred resolutions, both of the Most Holy Congregation and of the Roman Rota. Since Apostolic letters always contain this tacit condition, namely, that the petitions are based on truth. Therefore, he argues, what has been presented to the Pontiff, and what has provided the cause and origin of the letters in question, must be carefully examined. But since not only one falsehood is found in the matter, but several, and indeed fraudulent ones, it is certainly not permissible to deny the appeal. And in truth, he adds, there is no doubt that the Pontiff granted the Apostolic letters to Alesso for only these two reasons, that is, because they were consistent with the truth that the Bishop had narrated, when Alesso was appointed to govern-

[*Latin ed. p. 471*]

CEPHALUDEN. He asserts that the parish church was suitable and acceptable to the people; secondly, that the Bishop remained firm in his will. However, the first assertion is false, as this is evidenced by the testimony of the Bishop himself. For he confesses that he was deceived by the false statements of certain individuals: after submitting his petition, and after investigating the life and conduct of the priest Alesso, he discovered that he was not only unworthy of the parish, but indeed most unworthy, lacking

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all the knowledge and virtues that a parish priest ought to possess, and there were grave indications that he himself was the author of the deceptions by which the Bishop was deceived. Therefore, the advocate continues, since a stronger proof of the deception cannot be had, nor is it desired, than that which proceeds from the mouth of the petitioner himself, who clearly admits that he was mistaken, no one will enter the court of open accusation if the Pontiff always intends to favor those who are worthy, especially when it is a matter of the care of souls, which is of the greatest importance. Furthermore, the advocate states, it is easily demonstrated that the second point is also false, namely, that the Bishop did not remain in his original intention regarding the priest Alesso. For as soon as he recognized the unworthiness of this priest, he diligently sought to correct the error, warning his agent not to submit any further petitions for permission to hold the benefice, and if such a petition had been submitted, to revoke it. If, however, the agent did not comply with the Bishop's instructions, perhaps in order not to lose the hope of profit, or because he did not receive the message, as he might claim as an excuse, this one thing always remains true, namely, that the Bishop did not wish to grant permission to hold the benefice any longer, and if the Pontiff had learned this, it is doubtful that he would have granted the letters. Therefore, it seems that the Apostolic letters are vitiated by error, and that they should be subject to the judgment of open accusation. This is all the more true if it is noted that, according to the Bishop's judgment, Alesso was the author of the admitted fraud and corruption, and that there are grave indications that he did not want his deception to be defended by the deceived party. For...

[*Latin ed. p. 472*]

472. CEPHALUDEN. The penalty for that perversity, of he who obtains a rescript through deceit, is that he should derive no benefit from it, and should entirely lack the advantages conferred by it, as stated in the aforementioned chapter concerning rescripts. Reiffenstuel concurs in this, in Volume I, Title 3, Section 8, number 176, saying: "If the rights alleged in a rescript pertain to justice, then a stronger conclusion follows concerning rescripts of grace and regarding benefits, because deception more easily invalidates gracious letters."

Regarding the second case, in which the advocate argues, it has been demonstrated that the collation made by the Bishop must be upheld. Indeed, when a parish becomes vacant in the month of October, and the Bishop reserves the right to appoint a new pastor, and when he orders that a dispensation be granted from the customary procedure, the matter is fully restored to its original state, and therefore, he, in appointing a new pastor, has exercised his rightful authority.

As for the provision made for a particular person, when he is free from any blemish, endowed with knowledge and good morals, and earnestly de-

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siring to care for souls, as numerous testimonies attest, he should be maintained in his position, especially since he obtained the parish not through any special privilege, but through his own efforts, namely, by successfully completing the examination with *laude* before the proceedings of the Council of *Tridentini*.

It is not appropriate to argue that the parish benefice has been transferred to the Holy Father, since he himself affixed his hand to the appointment. Indeed, it is certain in law that the transfer of a benefice depends on the validity of the cause; thus, if the cause upon which the transfer is based is corrupt, then the transfer itself must also be considered corrupt. As Riganti states in *Romanus*, 1 in *Ruhr*, Regulation 1, to Section I, number 98: "The transfer of a benefice depends on the validity of the grace, and the validity depends on the justification of the cause, because the Pope limits his action by the reasons stated; and therefore, if the reasons stated are not true, the Pope does not intend to prejudice the ordinary collators." And the Rota, in the case of *Buratto*, Decision 78, states: "Just as when the cause is false concerning the pertinence of the collation or concerning the vacancy, there is no transfer; so also there is no transfer when there is a falsehood in the cause."

Therefore, when the Holy Father, having been induced by false statements from the Bishop, affixed his hand to the collation of the parish, it follows that...

[*Latin ed. p. 473*]

CEPHALUDEN. 473 Let no affection remain; and more strongly, because, through the deceit of the priest Alesso and his agent, it appears to have been obtained through fraud. Considering these and other matters, the following doubts were raised: I. Whether there is a place for the opening of a cause in this case. II. Whether the collation of the parish is valid, having been carried out by the Bishop with the favor of the priest Anthony Puccio in this case. RESOLUTION. After discussion, the Holy Office decided, on December 1, 1885, to respond as follows: To the first and second: Let a new investigation be conducted, and let the proceedings be transmitted to the Apostolic Datary, after which a decision will be made. FROM WHICH WE GATHER: I. That, contrary to the Apostolic Letters, the opening of a cause is to be granted if it is established that the same [letters] are infected with the vice of deception and fraud; because they implicitly contain the condition that prayers must be offered with truth. II. That, with the hand of the Supreme Pontiff, no one can dispose of anything for his own benefit, for that occasion, if the Pontiff has not been induced to place his hand based on false statements; for if the cause is false, the intention is not valid. III. That the opening of the cause in this matter appears to have been admitted, from which it follows that the parish was not given to him who held the Apostolic Letters, but a new investigation was ordered.

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BERGAMO. SOLUTION. On December 5, 1885. On the occasion of the promulgation of the Dogma of the Immaculate Conception of the Blessed Virgin Mary, the Bishop of Bergamo, Aloysius Speranza, considered it fitting to dedicate a votive temple to the same Virgin in a place where, formerly, stood the Church of Gracias, adjacent to a certain hospital. After a convention with the administrators of the hospital, the Bishop promised to build a temple. SUMMARY OF THE MATTER.

[*Latin ed. p. 474*]

474 BERGAMO. He resolved to build, and, at the appointed time, devoted whatever resources he could gather through alms to this construction, and employed all that he could command. He also promised to leave a written record in the archives of the Curia, in which he would commend the completion of the church to his successor, so that, should he be prevented by death from finishing it, the work might be carried out. Then, he established a commission of upright men, and entrusted them with the task of overseeing the construction of the church, but under his own authority and vigilance. He announced this undertaking to the entire diocese, so that every faithful person might contribute to the work. The commission, using the funds collected and often obtaining loans, brought the work to completion. After the church was consecrated and opened for public worship, the commission continued its work, so that the church might be fully completed: the facade of the church still needed to be raised, and, furthermore, it needed to be made suitable for the parish that the Bishop intended to establish there. The commission, at the Bishop's command, also arranged for the construction of a new parish house; and, finally, in the year 1879, with the consent of the civil authorities, the church of the ConcepciÃ³n was raised to the status of a parish, and received its pastor. However, the commissioners continued in their office, concerned about the unfinished works, when suddenly Bishop Speranza died. In his will, the Bishop had bequeathed his patrimonial property to his nephews, and, with the title of heir, he left everything else to Canon Thomas Foresti, so that he might dispose of these assets according to the Bishop's wishes, which he had expressed orally. Furthermore, the commissioners of the church of the ConcepciÃ³n intended that a portion of the inheritance of Bishop Speranza be applied to pay off a debt of 60,000 or more lire, a debt contracted for the construction of the church and parish, and still outstanding; but the heir wished to dispose of the assets in a different way. The Curia of Bergamo resolved this issue by condemning Canon Foresti, as the heir of the deceased Bishop, to relinquish, to the extent of the inheritance, the entire debt contracted by the episcopal commission, for the construction of a new church dedicated to the Most Holy ConcepciÃ³n. Canon Foresti appealed

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this decision to the Sacred Congregation.

[*Latin ed. p. 475*]

BERGOMEN. 475. A Synopsis of the Arguments. The advocate, with great zeal, having first explained the history of the construction of this temple, recounts that it was begun solely by the will of the Bishop; and that in the aforementioned construction, the same Bishop obligated himself: for, since, without any compelling necessity, he himself decided to build this votive temple, he himself appointed the commissions, which he also directed, and he himself performed or oversaw many of the works in the construction of the Church, often contributing from his own resources. And this conclusion, he argues, must be reached even if the argument proceeds by exclusion. For, he says, the responsibility for the construction does not burden, nor can it burden, the successor in the episcopate. For the successor in the benefice is bound to fulfill the real obligations that, indeed, according to L. Imperatores, ff. De publ. vect., are inherent in the benefice, and which affect the thing itself as if in shadow; but he is not bound by personal obligations which the deceased undertook for himself. Furthermore, the advocate observes, the burdens and responsibilities of the construction of ConcepciÃ³n in no way affect the episcopal benefice and table. It cannot be said that the table was burdened by the very act of the Bishop: for this would be like a species of alienation. For, as is stated by Pirhing in book 3, title De reb. eccl., not alien, section 2, number 15, and according to Extrav. Ambitiosae, a species of alienation is to impose real burdens on the benefice. Furthermore, it cannot be supposed that the Bishop Speranza, at that time, intended to complete an abusive act without obtaining the consent of the Chapter, which was required according to chapter 1 De his quae fiunt absque consensu etc., and especially without obtaining Apostolic approval, which is absolutely required under pain of excommunication, as is stated in the aforementioned constitution Ambitiosae. And it cannot be said that the same Bishop obligated himself to less than the fruits of his table. For it is well known that all the fruits of a vacant benefice remain reserved to the successor, according to chapter Quia saepe De elect. in VI, and according to IURA COMMISSIONIS.

[*Latin ed. p. 476*]

476 BERGOMEN. Concerning the clerical status derived from a benefice, dispute, no. 45, par. 36: Furthermore, this very obligation would constitute a species of alienation. Therefore, the patron concluded that the obligation which Bishop Speranza had assumed did not constitute a real burden on the benefice, and that, consequently, his successor could not be burdened by it. But neither were the commissioners, whose diligence the same Bishop had employed in the construction of the church. For these individuals were acting as mandataries, namely, "those to whom a task is entrusted gratu-

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itously" (from L. 1 ff.). Indeed, in the public instrument of June 14, 1856, in which the role of the commissioners was defined by the Bishop, this very point is found. As time passed, funds were lacking, and the Commission contracted a loan, and made new collections throughout the diocese, in order to fulfill its mandate. The Bishop also desired to build a parochial house; and from this arose the necessity of a new loan of 10,000 lire, which, in fact, was contracted on September 15, 1876, by the Bishop himself, as can be read in the solemn instrument then executed. Furthermore, the patron argues, it cannot be said that the Bishop, who participated in this loan to such an extent, was absent from the others, and that he approved of this one loan alone, while rejecting all the others, or that he did not consider them to be his own: for if he participated only on this occasion, a special reason existed, namely, the imposition of a mortgage on the house. Moreover, the Bishop is to be presumed to have consented, both to this contract and to others, and to other works of the Commissioners, because he approved of what the Commission had done; then, because he gave the Commission a mandate to act, which could not be accomplished without funds; and finally, because the Commission stated that it was acting with the approval of the Bishop, for example, in the collection of alms throughout the diocese and in more difficult matters. In this case, since the Bishop was present and did not dissent or prohibit, he must be considered to have openly consented, according to I. 6 § 2 ff. Mandati, and chapter I of De appell, in VI. In what way, then, and although it is said that the Bishop...

[*Latin ed. p. 477*]

BERGAMO. Regarding a debt of 477 [units of currency] and a loan, it is stated that the creditor is still obligated, or that the debtor is still bound. The patron argues that either the debtor himself, or his heirs, can, at least through a *rei transeunti* action, recover the sum according to Law 3, concerning *rei transeunti*. The money borrowed from the commissioners was used for the construction of a house and for the structure of that church which freely belonged to the Bishop. Therefore, considering the entire matter, the commissioners are not obligated to pay the aforementioned debts, nor is the successor in the bishopric. Consequently, it is readily concluded, according to the patron, that Bishop Speranza, whether considered as a bishop or as a private individual, is obligated. All of this is confirmed by the will of Speranza himself, both presumed and expressed. It is presumed because, having distinguished assets acquired from his father from those acquired by others, he did not call his nephews as heirs, but rather a certain priest; this distinction was not made without reason, and it appears to be an indication of his will. But there is also his will expressed, both in the instrument mentioned above, dated September 15, 1876, and in others, and especially in the words that, while gravely ill, he addressed to his heir, Canon Thomas Foresti, saying: "I commend my reputation to you; first,

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take care of debts, then of your duties, and if anything remains, give it to the poor." These words were spoken to the three secular priests, besides Foresti, who were present, as those same individuals, summoned to court, testified. THE RIGHTS OF CANON THOMAS FORESTI. Those who defend the rights of Canon Foresti contend that the judgment of the Bergamo court is unjust, and that the current Bishop is obligated to repay the loan that was contracted for the construction of the new church. First of all, they point out that Bishop Speranza was compelled to build the church due to the needs of the faithful. Indeed, not only did Speranza himself testify to this in his pastoral letter of August 11, 1857, but it is also clearly evident from the donations made by the faithful and by the community itself for this purpose, as well as from the erection of...

[*Latin ed. p. 478*]

478 BERGOMEN. To the Church, in the parish, which is established only when necessity dictates, as determined by the Council of Trent in chapter 4, Session 21, concerning reform, and as De Luca states in discourse 16 in the annotations to the Council of Trent; Ferraris, in *Bismembratio*, number 42; or, according to the more recent practice of the Sacred Congregation, even for the sake of utility, as stated in *Acta S. Sedis*, volume 7, page 45, in the annotations. From these, it is said that the patron [of the church] declares that Bishop Speranza acted not as a *privata* person, but as a Bishop for the time being, to whom the care of souls is entrusted; Lotter, *de re benef.*, book 1, question 9, number 78; Ricci, in *praxi aur.*, resolution 535. Furthermore, it is certain in law, he says, that he who acts in his office for the good and benefit of the society to which he belongs, is not held liable for expenses from his own resources, but rather the society itself is liable, L 27 ff. *de reb. er ed.*; I. 1 of the Code; and therefore, in the case of one who represents it and succeeds in the same office, he is also liable to pay even debts contracted by his predecessor, I. 2 ff. of the Code. This applies whether the action is taken in the name of the University or against it. For that which is done in the name of the University or the Republic, cannot in any way accrue to the private property of the administrator, I. 1 ff. §. 2 of the cited title, since he who acts in the name of the University is assimilated to a procurator sent by a private person to conduct his affairs, as taught in I. 6 §. 3 ff. of the cited title and in chapter 9 concerning Procurators, to whom nothing is imputed, Reg. 72 iussi in VI, nor even negligence, as is argued in chapter 2 §. Nos igitur de in integr. restii.; chapter 21 concerning sentences and judgments, unless fraud or deceit is present, De Luca, *de patr.*, discourse 20, number 3. The Rota also agrees, always maintaining these two principles: 1.° "Administrators cannot be sued in their own name" for those things which they have done in the name of administration and procuration, decree 392, number 36, part 5, volume 2; - 2.° "The principal remains obligated by the administrator's action," therefore, "as if he himself had

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conducted the business," decree 432, number 30, part 9, volume 2. It is clear to no one that the Bishop for the time being is...

[*Latin ed. p. 479*]

BERGOMEN. 479. The administrator of the church entrusted to him does not have to remit, from his own resources, that which he has usefully expended for the administration of his church; S. O. C. in Galtellinen-Noren. Solution of May 10, 1884. Furthermore, since it is well known that the episcopate is a true benefice, Lotter, *De re benef.*, book 1, question 9, number 64; Barbosa, *De officio et potestate episcopali*, part 2, appendix 1, number 11; and the successor in the benefice is bound to pay the debts contracted for the benefit and necessity of the church, John Cardinal Antonelli, *De jure clericorum*, chapter 12, number 2. S. C. C. in Savonen and Naulen, regarding the solution of the pension, August 22, 1885; (1) it is said that the obligation of the predecessor, as bishop, passes to the successor, Garcia, *De benef.*, part 1, chapter 5, number 201. This the advocate again confirms from the Council of Trent, which in chapter 7 of Session 21, *De reformatione episcoporum*, granted to bishops for a time the faculty of restoring and repairing churches from whatever fruits and revenues. Furthermore, the advocate affirmed that Bishop Speranza never declared that he intended to build a new church from his own resources; for no indication of this obligation is found in the instrument of March 26, 1856, nor in the stipulation of June 14, 1856. On the contrary, it is evident that the opposite is true, since it was stipulated that the elected deputation should be granted the *summa* of alms collected for this purpose, until the completion of the church. Moreover, in his pastoral letters of August 11, 1857, Bishop Speranza himself did not hesitate to invoke the support of the faithful. All these circumstances, the advocate maintains, speak in favor of his client: for surely no prudent person would assert that the heir of the prelate is bound to pay the expenses incurred by the deceased for the performance of his pastoral office for the benefit and necessity of his church. And this all the more so, since the Bishop, in his last will...

[*Latin ed. p. 480*]

48. In BERGOMENSI, [the advocate] has arranged the documents concerning the aforementioned debt. Furthermore, he asserts that the presumption of law and of right, which Bishop Speranza exercised in fulfilling his office, according to the disposition of the Council of Trent, Session 21, Chapter 7, concerning reform, and just as the burden imposed on a person passes to any successor; *Surdi, cons. 211, no. 15*, so too the burdens imposed on a dignity and its offices pass to a successor, by the very presumption of law and of right. The advocate also does not fail to note that the canon of Foresti is not the universal heir, but only a legatee for that part of the goods which Bishop Speranza obtained as an ecclesiastical

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person. Moreover, he states that it is well known that a legatee is not bound to pay the debts which burden the inheritance, *Voet, lib. 30, 31, 32, title 1, de leg. et f d., no. 15*; and the current code also, in article 977, first requires that heirs be relieved of these obligations, and in this case, the heirs are the nephews of the deceased Bishop Speranza, and only then does it grant a recourse against legatees. After these points, proceeding to the second part of his argument, the advocate seeks to overturn the judgment of the BERGOMENSI court. First of all, he notes that the court acted wrongly in ordering the sequestration of 28,000 *lire* against the canon of Foresti before the knowledge of the case, and therefore the judgment is invalid, since a judgment cannot begin with execution, *I. un.*, as often stated in the Code concerning prohibitions of sequestration. And this is all the more so because, in this case, there was no reason whatsoever for the sequestration to take place. He also affirms that the judgment must be rejected, because it was rendered by a judge suspected of bias. Indeed, it cannot escape anyone that the Bishop should have been involved in the judgment; and since the judgment was rendered by the Vicar General, who, in this matter, constituted one person with the Bishop, according to Chapter 2 of the Customs, Chapter 3 of Appeals, 6; Benedict XIV, *de Synodo dioec.*, book 2, chapter 8, no. 2; the advocate also states that the Bishop could have refused to participate, as taught by John Cardinal Antonelli, *De regim. ecclesiae*, book 5, chapter 10, no. 7, and by Ricci, *praxis aur. for. eccl.*, page 2, resolution 203.

[*Latin ed. p. 481*]

BERGOMEN. 481 He asserts that another defect exists in the judgment, namely, that the judges established no debate or discussion of the cause, and that the president of the tribunal rendered the judgment while being absent from a distance. Pressius, however, refuting the points of the extensive judgment, observed that Bishop Speranza is improperly called the author of the church; for it is not sufficient that he himself contributed large sums from his own resources to its construction, nor that he intervened with his episcopal authority in order to truly be called the founder, and that he be held responsible for completing the construction from his own resources. Furthermore, if Bishop Speranza promised collections of alms, and if he established a certain deputation to procure the necessary resources for the completion of the work; these rather exclude the obligation of the Bishop himself to contribute from his own resources. And this especially because in the judgment it is stated that Bishop Speranza chose the deputation as the Bishop *pro tempore* [for the time being]; from which it follows that the mandate is not for any private individual; in which case it would be absurd for the heirs of the Bishop to be able to revoke the mandate. But the things that are contained in the judgment do not prove, as they should, that Bishop Speranza acted as a private individ-

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ual, and assumed upon himself a new obligation to build the new church from his own resources. And do not say that in the documents presented, Speranza himself was sometimes cited, and that he paid the dues; since the Reverend Speranza was cited as the Bishop *pro tempore*, not as a private person. But if, in some particular case, he assumed the obligation to pay from his own resources, this does not prove the general obligation, which must always be clearly proven according to I. 99 ff. on the subject of obligations. Furthermore, since it is well known that judges must judge according to the acts and evidence, Ferraris, verb. *Iudex*, no. 64; and from the foregoing, nothing is presented from which a personal obligation can be proven; therefore, the advocate concluded that the judgment of the Court is based on a false premise. With these preliminaries, it was proposed to examine the Act, Volume XVIII, page 00X17.

[*Latin ed. p. 482*]

482 BERGAMO. Question: Whether the judgment of the diocesan curia of Bergamo should be confirmed or rejected in this case. RESOLUTION. After deliberation, the Sacred Congregation for Affairs of the Church, on December 5, 1885, decided to respond: Debts must be paid, using the means employed by the preceding Bishop, and other means which a modern Bishop may deem appropriate; and considering the following: I. The successor in a benefice is bound to settle the debts contracted by his predecessor for the benefit of the Church; and since the holder of a benefice at the time is nothing other than an administrator of the church entrusted to him. II. The episcopate is a true benefice, as affirmed by many doctors and by the Sacred Congregation itself. III. An agent acting for the good and benefit of the society to which he belongs is not bound to incur expenses from his own resources, but rather the society itself is bound. IV. An agent acting in the name of a university is to be considered similar to a procurator sent by a certain person to conduct his own affairs. V. Administrators cannot be held liable in their own name for actions performed in the name of administration or procuratorship; and since the obligation of an administrator remains only with the principal, as if he himself had conducted the business. VI. A Bishop, when acting for the good of the diocese entrusted to him, for example, by building a church in order to establish a new parish, should have the debt for foreign currency not yet repaid at the time of his death discharged by his successor; because the obligation of the preceding Bishop, in that capacity, passes to his successor.

[*Latin ed. p. 483*]

483 COMO. OF THE NULLITY OF MARRIAGE. On the days of July 11th and December 5th, 1885. SUMMARY OF FACTS. Maria Anna Beccadelli, daughter of a prince of Camporeale and of the noblewoman Laura Acton,

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aged twenty-nine years, born in Florencia, had become acquainted with Carolus Dònoff, a German by nationality, and of a non-Catholic religion, for the first time in the year 1866. The mother of this Carolus, after the death of her husband, had entered into a second marriage with the knight Marco Minghetti. Negotiations had been undertaken regarding a marriage between Maria Anna and Carolus, but the impediment of disparity of religion prevented the marriage from being celebrated according to the rites of the Catholic Church, an impediment to which the refusal of the aforementioned Marco to have his sons educated in the Catholic religion presented a significant obstacle. In order to satisfy the twofold desire of Maria Anna, namely, to contract the marriage with Carolus and to obtain a Catholic blessing, a plan was devised, namely, to find a parish priest who would overlook all existing impediments and celebrate the marriage. Through the efforts of certain individuals, one of whom was a minister of the Italian Government in the Swiss Republic, and the other of whom held a position as a counselor in that Republic, a certain parish priest of the village of Morcote, belonging to the Diocese of Como, but situated within the territory of the Helvetic Confederation, was identified. This priest, either through ignorance or perversity of mind, had not infrequently celebrated Catholic marriages between a Catholic and a heretic, even though a dispensation from the Holy See would have been required. One of the things the priest requested was that the bride, at least in form, acquire a domicile in his parish; and for this, he considered a declaration offered to him by the local municipality to be sufficient and more than sufficient. In fact, a document from the municipality, declaring that the bride's mother, Laura Minghetti, had been received as a resident by the brothers Pioda, had been prepared. Therefore, on July 17th, Laura Minghetti arrived with her daughter and with the knight Mario Matino in Lucanum, and they remained there.

[*Latin ed. p. 484*]

484. GOMEN, having enjoyed a period of courtship until the day of the marriage, August 12th. A municipal certificate regarding the chosen domicile, residing with the Lord Fossati Morcóte, had been issued on July 20th. With all preparations complete for the ecclesiastical ceremony, on August 4th, the gentleman Minghetti arrived from Lucanum; and on the 8th, Count Dönhoff. Finally, on August 12th, after lunch taken by the Lucani, everyone arrived at the estate of Morcóte around four o'clock in the afternoon: they proceeded to the house of Fossati, and shortly thereafter, to the Church. With the presence of several relatives and friends, the ecclesiastical marriage ceremony was performed. The marriage, which they call civil, had been celebrated much earlier in Lombardy; indeed, the Lucani had even been married before a Lutheran minister. Having departed from Italia, the spouses traveled to Stutgardia, where Carolus Donhoff had been sent for political matters; subsequently, they resided in

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Vindobonae. However, from the very first months of their cohabitation, a separation of spirits began to develop, and especially when the first child was born, the man decided to raise it in the heretical religion, a decision strongly opposed by his wife. The growing daily disagreements led the spouses to separation, which was finalized in the year 1882. The divorce proceedings were initiated by the man in Berolini, and, with a favorable judgment, he was, according to the laws of the place, released from the conjugal union and from the marriage bond. After the judgment of the Berlin Tribunal was recognized by the civil authorities of the Italian Kingdom, Maria Anna Beccadelli appealed to the Holy See, seeking to have the marriage with Carolus Dönhoff declared invalid, arguing that, since it had been celebrated before a minister who was not their own parish priest, it was tainted with the vice of clandestinity. Disputatio Synoptica. WHAT THE WOMAN ALLEGED: Based on the laws established by the Council of Trident, she argued: The Fathers of the Council of Trent, in commanding that marriage be celebrated before a priest, intended that this priest be the proper priest of either of the contracting parties; Sánchez de matr. lib. 3 disp. 19 num. 1, Rota decis. 239 num. 11 seq. coram Clemente XIII.

[*Latin ed. p. 485*]

BOOK 4. CHAPTER 485. Pope Benedict XIV, in the Constitution *Redditae sunt nobis* of September 17, 1746, inquired whether the decree of the Council of Trent, promulgated in the town of Morcote in the Diocese of Como, was still in force. It is superfluous to investigate this, since the Bishop himself has provided affirmative testimony on this matter. Therefore, a marriage cannot be declared valid unless it is proven that either the bride or the Count Dönhoff had a domicile or quasi-domicile in the town of Morcote, so that a priest, either the proper pastor of one or the other, could be said to belong to their parish. However, it has been most convincingly demonstrated that neither was the proper pastor of either. Indeed, according to the law, the domicile of children is considered to be in the place where the father of the family has his domicile, and this right is even stronger in the case of a girl who is twenty-eight years old, as was Anna Maria when she married Corniti. However, there is no doubt about the domicile of the mother and the stepmother at the time of the marriage. For it is a matter of public record that the stepmother had established her domicile in Florence, in the palace of the Gherardeschi family, for the greater part of the year, and during the summer months near Bologna, under the parish of Saint Mary of Mercy. The stepmother herself testified to this in a sworn examination. The mother, along with four other witnesses, all speaking with one voice, stated that the girl had resided in Florence and had always been with her husband, Minghetti. Therefore, in order to establish the validity of the marriage, it must be shown that the spouses, Minghetti and the girl, had a domicile in the town of Morcote before the

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marriage, because domicile is legally considered to be "the place where each person has established the sum of his affairs and possessions, from which he does not intend to depart, unless compelled to do so, and from which, even if he appears to be traveling, he is not truly absent" (L. Cives 7, Cod. de incolis; L. Senatores 2, Cod. where Seneca, or Alfenus, says: "where each person has his seat and tables, and has established the constitution of his affairs"; L. In lege censoria 203 ff., on the meaning of the word "domicile"). But nothing more ridiculous can be conceived.

[*Latin ed. p. 486*]

486. GOMEN. Concerning the most disparate and insignificant town of Morcote, and regarding the condition of the knight Minghetti, all these matters have been verified. The proof of domicile which the parish priest requested did not concern the daughter, but the mother: and it was necessary for this woman to have held the domicile of her husband, who resided in Florencia, and she could not have acquired a domicile of her own elsewhere without his consent. Indeed, Voet, in the cited passage, number 95, states: "Just as the wife follows the dignity of her husband, so too does she follow his domicile." (L. Exigere 65 ff. h. t., L. ult. item 3 ff. ad Municip., L. ult. Cod. de incolis, L. Mulieres 13 Cod. de dignitat. L. Mulierem 5 ff. de ritu nupt.). Nor did she obtain that document for herself: for in her examination, she testified that she had given no order regarding this matter; everything was prepared by the brothers Pioda and the parish priest. Moreover, even if such an order had existed, nothing would be inferred regarding the marriage: for one thing is domicile according to the law of the city, and quite another is the true and proper constitution of domicile according to the law of inhabitants (Sánchez, lib. 3, disp. 18, num. 24). For domicile is not established merely by contestation, but by intention and action: for it is known that a mere contestation is of no value in establishing domicile (Reiffenst., Lib. 2 Decret., Tit. 2, §. 2, num. 17; Voet, in the cited passage, §. 98; Zolling er Insta, iur. eccl., Lib. 1, §. 148; S. C. C. in Anconitana Nullit. matr., 10 Maii 1760). Furthermore, since in the municipal testimony it was stated that the woman had chosen a domicile in the town of Morcote with Joseph Fossati, she must be considered a guest in law, and therefore she did not acquire a domicile; for he who establishes his dwelling in another's house is not considered an inhabitant, but a guest (L. 1 §. Haec autem vers. Hospes ff. de his qui deiec.; Card. De Luca, De servit, disc. 82, num. 3; Rota in Neapolitana Matrimonii, 22 Iun. 1705, §. 11, cor. Priolo). Nor is it of any benefit to invoke a quasi-domicile. Indeed, a quasi-domicile differs from a true domicile in that a true domicile requires the intention of permanent residence, while a quasi-domicile requires the intention of residing for the

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greater part of the year (Gonzalez, in...).

[*Latin ed. p. 487*]

GOMEN. 487, title 3, concerning the Dutch, concerning marriages, number 8; Reiffenst., title cited, number 60; Schmalzgrueber, ibid., number 150; Pirhing, ibid., title, number 19. Finally, Benedict XIV, in the Constitution *Paucis*, required at least one month's delay to ascertain whether the intention was to reside there for the greater part of the year. Therefore, unless this delay precedes the establishment of a quasi-domicile, anyone who seeks a foreign jurisdiction solely with the intention of entering into marriage, and not with the intention of residing there for a long time, shall render the marriage invalid, according to Benedict XIV, Institutes, 33, § 4. Indeed, the very Pontiff demonstrated that He had applied this doctrine in a concrete case on July 13, 1725, while serving as Secretary. In truth, the mother and daughter of a girl had entered the city of Lugano on July 17, and after having spent twenty days there, on August 12, they went to the town of Morcote, where, after having stayed for three hours, the marriage was celebrated. It is not necessary to apply to that municipal document, which contains proof of domicile. For those who intend to reside there for the greater part of the year, if they begin to reside there, they establish a domicile; but this does not apply if they never begin to reside there. In this way, Sánchez understands the beginning of a quasi-domicile, *De Matrimonio*, Book 3, Disp. 23, number 14. This doctrine is followed by Antoine, *Theologia Moralis de Matrimonio*, § 452, note 1*, and St. Alphonsus, *De Matrimonio*, C. 3, doubt 3. As for the Count, he had a domicile in Stuttgart, where he resided for business, or in Berlin, where he was born; he arrived in Lugano four days before the marriage. Nor can those who are vagrants be considered to be contracting the marriage: for vagrants are those who have no true domicile anywhere, or a fixed abode; or who, having abandoned their domicile, seek another; Zallinger, *Institutiones Iuris Ecclesiastici*, Book 1, title 2, § 149*; Schmalz, *De Clandestinis Desponsationibus*, number 168; Rossignol, *De Matrimonio, Pars 1, Praenotiones*, 22 and 27, § 2 ff., concerning municipal matters. The Co-testified that there was no sanction at the root.

[*Latin ed. p. 488*]

488. Regarding the deposition of a Bishop: Even if a true impediment existed, it could not have had any effect, since it presupposes at least a presumed consent through marital cohabitation; Barbosa, Decreta, L. 2, note 27, number 16. Moreover, in a case where a dispensation should rather be imposed than granted, and either spouse, or one of them, objects, such a situation is alien both to the nature of the act and to the discipline of the Holy See. Pope Benedict XIV, in his Apostolic Letters *Etsi matrimonialis* of September 27, 1755, which are quoted from Pernau, *De Matrimonio

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Christiano*, Lib. 2, section 1, chapter 4, article 2, provides a recent example concerning the case of Comen, or Mediolanen, regarding the nullity of a marriage, which was presented before the Sacred Congregation on December 5, 1863. The duration of the marital cohabitation cannot eradicate an incurable defect of form; see Navar, Lib. 4, *De Clam. Desp.*; Ursaya, vol. 2, page 1, discussion 10, number 96. Finally, in his response to the objections of the defender of the bond, he noted: "The essence of his allegation is that not only are true residences sufficient for the definition of a parish, but also presumed residences." In the case in question, a presumed residence was held to exist for the girl, because her mother had possessed it in the town of Morcóte. And the defender of the woman exclaimed: "I deny that presumed residences are sufficient for admission to marriage. I deny the major premise; I deny the minor premise; I deny the conclusion." Indeed, he continued, after only one month, a residence is not presumed, but rather an intention to remain for a significant portion of the year. This was excellently demonstrated by Cardinal Tarquini in the case of the Roman Marriage of January 11, 1868. But intention alone is not sufficient; for in order to acquire a residence or quasi-residence, both intention and the fact of habitation are required; Reiffenst., Lib. 2, title 2, § 17; Zolling, *Institutiones Iuris Ecclesiastici*, Lib. 1, Title 2, § 148; Antoine, *Theologia Moralis*, title on marriage, § 452; St. Alphonsus, *Theologia Moralis*, Lib. 6, Chapter 3, doubt 3; Textus in L. 20 ff. ad Municipal. If these things are true, a presumed residence is not only absurd, but utterly impossible. Indeed, while intention can be presumed, a physical residence, which is a corporal thing, cannot be established by presumptions, and all such presumptions are to be disregarded.

[*Latin ed. p. 489*]

COMEN. 489 Nor should a probable error or a false opinion be introduced, nor should good faith be considered, by which actions are sustained. The decree states that only the proper pastor should be consulted. Therefore, the presence of the proper pastor is required for the validity of marriage, under penalty of nullity, as noted by Barbosa, decrees, book 2, volume 16, number 69. The Holy Office has decreed that opinions, good faith, and colored titles should not be held in any regard, as testified by Benedict XIV in *De Synodo*, book 12, chapter 5, number 5. And Schmalz speaks wisely on this matter in Book 4, title 5, § 102, and Sánchez de matr. in Book 2, dispute 17, number 10. It is futile for the party seeking marriage to turn to a putative pastor. The conditions under which the presence of a putative pastor is valid can be found in Sánchez de matr., Book 3, dispute 21, number 4, and in Reiffenst., Book 4, title 3, number 75. Or, four conditions are required for the legitimate presence of a putative pastor: 1. The utility or detriment must not be private, nor of one or the other, but public, or of the entire people. 2. The error must not be of one or the other, but equally of the entire

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people. 3. The title must emanate from a legitimate superior authority, and certainly not from an alien one. 4. There must be a defect which affects the title, which must be hidden, so that it is unknown to anyone at the time of the marriage. In the case presented, a private good was brought into conflict, and a universal error was not found, because when dealing with the woman Laura Minghetti, the people could neither know nor ignore how things stood; and it was so far from a legitimate superior authority intervening with the pastor Petrini that he was recognized as the proper pastor, and he was even reprimanded and suspended for it. Finally, a defect must be hidden in the putative pastor, such as that of one who obtained the parish through simony, or who professed heresy, which, however, was only discovered after the marriage. But in the case of a non-proper pastor, it would be foolish to consider a defect as hidden when it was well known that a noble woman had never lived in the parish. The theory of a putative domicile remains, which, if admitted, would mean that anyone could be married before any pastor.

[*Latin ed. p. 490*]

490. It is permissible for the entire region of Italia to be considered within the boundaries of Europa. For the municipalities would provide as many priests as each required. Nor is it to be presumed that Laura Minghetti intended to establish her residence in the town of Morcóte. Indeed, all laws, both civil and ecclesiastical, and those of nations, prohibit a woman from choosing her residence separately from her husband; Papirius Iustus writes in L. 38 ff. concerning municipalities, and Philip the Emperor in L. unie. of the Code concerning women and their place of residence, and the Civil Law of Italia, article 18, states: "A wife who is not legally separated from her husband has the domicile of her husband; and the same applies to a widow, until she acquires another." This law is of public law, as is clearly demonstrated by the most learned Laurent Principes in his work on French civil law, volume 3, title 3, chapter 1, section 3, number 84. It cannot be objected that the municipal registration should be considered, since it introduces a dispute that can be valued in Pontifical law. For it is also subject to nullity under ecclesiastical law, as testified by Sánchez De matr. Lib. 1 disp. 41 num. and Schmalz. Lib. 4 tit. 1 §. 316. Finally, the examples of cases examined have nothing in common with the subject matter. WHAT THE DEFENDER OF MATRIMONIAL BONDS OBJECTED. It is possible for someone to acquire, in a certain place, not a true domicile, but rather a so-called presumed, putative, or estimated domicile; which is sufficient for a validly celebrated marriage according to the law. To demonstrate this thesis, he asserted: that no one can deny the necessity of a presumed domicile, but that it is not of divine law, but only of positive law, that is, introduced by the Council of Trent. Indeed, it is a principle in those matters which positive law, whether civil or ecclesiastical, prescribes for the validity or effective-

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ness of acts or contracts, that a presumption is to be held as true: so that, given that something appears at first glance to have occurred according to the law, the acts obtain all firmness and validity, even if, upon closer examination, it is discovered to be otherwise.

[*Latin ed. p. 491*]

COMMENTARY 491: Regarding that condition which, by law, is prescribed under penalty of invalidity. According to Roman law, public acts performed by a slave are invalid; nevertheless, if this occurred through a probable error, the acts are maintained, L. 3 ff. concerning the office of the praetor. Furthermore, although a testament might be corrupted in which a slave had been used as a witness, if the slave behaved in such a way that he could reasonably be considered free, the testament is valid, Instit. Lib. 2 tit. 10 § 7. The principles of Roman law have not only been admitted by the Church, but also have been expanded and applied by it. Pignatel, Vol. 6, consult. 3, no. 14 and following. It is understood that, in both forums, that which is done with a common error by a supposed parson is valid according to equity. Therefore, if these things are to be held regarding a supposed parson, it follows that they are to be applied to a parson who is truly such, even if it appears that he is not the proper one. From the letters given by Benedict XIV to the Archbishop of Goan, dated March 19, 1758, which begin with "A few weeks ago it became known," at least one month's delay is required to acquire quasi-domicile. However, this one month's delay does not constitute true domicile, but rather a presumed domicile. In order to acquire true quasi-domicile, a delay of one month is required, along with the intention of remaining for a greater part of the year. But since, from a delay of one month, the intention of remaining is presumed, the parson of the place where the spouses have resided for the entire month before the marriage can validly join them. Therefore, a presumed domicile is sufficient for a valid marriage. It should not be objected that the aforementioned presumption arises from a positive law, which is not to be extended to similar cases. Indeed, Benedict XIV, in the letter to Goan, did not promulgate a law, but rather gave a doctrinal definition. In practice, the municipal registration of domicile is to be considered. Therefore, it should be presumed that the domicile was acquired by him who—

[*Latin ed. p. 492*]

492. GOMEN. He refutes the arguments that would suggest he has legitimately acquired something, and even if he is mistaken, it can certainly happen that someone claims to have a domicile where he truly does not; therefore, such an error is justifiable, and it is therefore considered just for the Church to grant jurisdiction or to apply marriage in such cases. Cases resolved in this sense have been decided by the Roman Congregation for Matrimony on April 28, 1667, between Franciscus Mancini and Cassandra

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Petrella, of Caesenate, or Forlivia; the marriage was resolved on February 20, 1723, and a more recent decision was made by the Roman Congregation for Matrimony on January 11, 1868. In the case where a municipal registration card indicates a domicile with the mother, it is not necessary to provide strict proof of domicile for the valid celebration of marriage. In fact, it is certain that Aloysius Pioda had the inscription in the municipal records commissioned by the Minghetti family. Furthermore, one witness indicated that the Dönhoff couple had renewed their civil and non-Catholic marriage according to the laws of the Kingdom of Prussia. The couple first resided in Stuttgart, and then in Dresden. If this is the case, then the marriage consists only of this fact: because the Council of Trent was never publicly proclaimed in Saxony, and the Benedictine declaration extended to the Kingdom of Württemberg, by virtue of which heretical and mixed clandestine marriages are valid. With these points discussed, the doubt to be resolved for the Congregation is this: Does a marriage consist of nullity in this case?

RESOLUTION. The Most Eminent and Reverend Fathers gave their response on July 1, 1885: "Affirmatively, provided the rights of the children remain firm." And since the case was again presented in the usual manner on December 12 of the same year, the rescript was confirmed.

FROM THIS, THE FOLLOWING SHOULD BE UNDERSTOOD: i. From the decree, marriages are considered invalid if they occurred before...

[*Latin ed. p. 493*]

•COMMENTARY. 493. Regarding either spouse, a parish is acquired through marriage, but not in places where the Council of Trent was promulgated. II. A proper parish is the parish of one's domicile. III. A domicile is considered to be established in that place where one has established the principal part of one's household, possessions, and fortune, from which one would not depart, unless compelled by some circumstance, and from which, when one appears to set out on a journey, one is seen to depart. IV. The domicile of family members is considered to be in that place where the head of the family has his household. V. A domicile differs from a dwelling in this respect: in a dwelling, a permanent residence is required; in a domicile, a greater portion of the year must be spent there. VI. To presume an intention to remain for a greater portion of the year, a delay of at least one month is required. VII. Vagrants are those who have no true domicile anywhere, or who have a fixed abode, or who, having abandoned their domicile, seek another. VIII. A dispensation is not presumed at the root [of marriage]; rather, it has no effect unless at least presumed consent is assumed through marital cohabitation; nor can the length of cohabitation remove the incurable defect of the form. IX. There are no presumed domiciles, nor putative ones; for these are established by the intention to remain and by the act of habitation. ARBOREN. DISTRIBUTION AND AL-

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LOWANCES. September 19, 1885. By summary petitions. COMPENDIUM OF THE MATTER. By a decree of September 20, 1884, a certain canon of the cathedral of Oristano, Serapion Carta, obtained an indult of jubilation, with the usual conditions, namely, that he may receive all fruits and daily distributions as if he were personally engaged in all offices. Furthermore, the Chapter was willing to grant him the daily distributions, but refused to grant him those which were...

[*Latin ed. p. 494*]

494 ARBOREN. These are granted on the occasion of processions, feasts, anniversaries, and especially the distribution (commonly called "peaggio") which is usually given on the night of the Nativity of Our Lord Jesus Christ. The Sacred Congregation to which a petition concerning this matter was presented, referred the petitioners to approved authors and to resolutions of the Sacred Congregation on similar matters. However, new petitions, commended by the Archbishop, were transmitted to the Sacred Congregation by Serapion himself, in which he laments that the Chapter, even after the aforementioned rescript, persisted in its opinion, alleging a contrary custom. Therefore, he humbly requests that the Sacred Congregation deign to declare whether these extraordinary distributions pertain to him; and, inasmuch as the aforementioned contrary custom exists, he supplicates that these distributions be granted to him nonetheless, considering his infirm health and his advanced age of 83 years.

Synopsis of Discussions. Furthermore, it has been frequently declared that, in the presence of a contrary custom, a canon who has received jubilation does not benefit from extraordinary distributions. This is clearly evident from the following resolutions: in Rieti, concerning Distributions, on April 19, 1692, in which, regarding the doubtful proposition "Whether a canon who has received jubilation is entitled to distributions and the revenues of absent canons, even if he is not present in the choir?" the response was: "Affirmatively, provided that particular constitutions and the custom of the Church do not obstruct." And similarly, in Aquipendien, concerning Jubilation, on March 28, 1697; and more fully, in Aquilana, concerning Indulgences, on June 26, 1745, in which, concerning an indulgence granted to a canon absent from the church, it was questioned: "Whether and with what benefits he should enjoy it?" and the resolution was: "All benefits are due to him, except those which, either by the disposition of a testator or by the statute and custom of the Church, are due only to those who actively serve, and furthermore." And likewise, in Tranen, concerning Jubilation, on January 13, 1703, in Spoletana and Reatina, concerning Punctures, on

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April 3, 1841, and in six hundred other cases.

[*Latin ed. p. 495*]

ARBOREN. 495. Now, should one depart from this established rule in this instance, given the favorable opinion of Canon Serapion, due to the advanced age and infirm health of the petitioner, and the favorable wish of the Archbishop regarding the granting of this grace to the petitioner? The matter was deferred to the Emiss Judges. With these preliminaries, the question was raised as to how the petitioner's prayers should be considered. RESOLUTION. The Sacred Congregation, after deliberation on September 1, 1885, responded: For the sake of the grace, having spoken with the Most Reverend Archbishop of BISIGNANO. PARTICIPATION IN THE BENEFITS. On January 23, 1886. Session 22, Chapter 13, concerning Reforms. SUMMARY OF THE CASE. The chapter of the cathedral of Bisignano formerly comprised 8 dignities, 12 canons, 9 parish priests, and finally, as many simple members as were needed, so that together with the parish priests, they numbered 16. These members, according to the testimony of the General Vicar, were subject to the same obligations and enjoyed the same rights, with the exception of precedence; from which arose a difference in seating in the choir. Therefore, both canons and parish priests enjoyed active and passive voice in the chapter; likewise, the assets of the chapter were distributed equally among all. However, regarding this matter, in which the present controversy arose between the parish priests and the canons, something more must be written. It is said that in ancient times, the assets of the chapter were in a common fund; and that there were two funds, namely, a large fund and a small fund. In subsequent times, the assets of the large fund were divided into 36 equal portions, assigning to each a certain number of funds, the income of which amounted to 85 *libellae*, and the administration of which each managed separately, while the small fund remained reserved for distributions. And thus the matter remained for a long time: but in the conversion and usurpation of bo-

[*Latin ed. p. 496*]

496 BISINIANEN. Among the new ecclesiastical events that have occurred in our time, the economic status of the chapter has been altered. The treasury, as I said, refused to recognize the ancient mass as a single entity, but instead decreed to retain eighteen of its portions, converting them into assets, while appropriating the rest; and thus, fulfilling what it had proposed, in the year 1870 it declared eleven quotas to belong to it, and in the year 1882, seven others. The chapter, at times, when one priest was lacking, would provide another priest to suffice, whom, however, Demanius did not recognize. Consequently, it came to pass that, when the treasury appropriated the last seven quotas in the year 1882, there were more priests in the chapter than the portions that remained. In this state

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of affairs, the canons believed that, of the remaining eighteen quotas, 12 belonged to the canons, and 6 to the simple members; and that the parish priests should be excluded from their participation, in accordance with what had also seemed advisable to the administration. However, the parish priests protested, claiming that they had a right to the aforementioned portion. The Bishop, having been requested for information and a decision, first inquired whether the canons were harassing the parish priests for profit, adding that he believed the matter should be left in its current state, namely, according to the wishes of the parish priests, who had claimed to be treated by the chapter as had been the custom in times past.

A SYNOPTIC DISCUSSION: DEFENSE OF THE PARISH PRIESTS.

In favor of the parish priests, it is primarily asserted by the Vicar General that the parish priests, provided they are from Bisiniano, have always been members of the chapter, to which belongs the parochial office; that the chapter has delegated nine priests, corresponding to the number of parishes, while observing the prescriptions of the canons; but that it has reserved the baptismal font for itself. And in the same sense, those who explain the matter more fully, namely the parish priests, state that, in ancient times, the cathedral church received an innumerable number of offerings; then it was determined that the chapter members should receive 40

[*Latin ed. p. 497*]

BISIGNANO. There were 497 souls, and among them were counted 8 dignitaries, 14 parish priests, and 18 participants, who for many centuries had maintained this state of the Church. However, in the year 1710, Bishop Berlingeri, of his own accord, wished to establish 12 canons, and to place intermediate dignitaries between the parish priests and the participants, thereby reducing their number. This action, although disapproved of by the Holy See at that time, nevertheless received the approval of the civil government, and the consent of the chapter, and thus the chapter came to be constituted of four degrees of priests: dignitaries, canons, parish priests, and finally, the simple participants, all of whom, by common consent, held their places, and were also essential members of the chapter. Therefore, there can be no doubt concerning the inclusion of the parish priests in the chapter, and the canons themselves protest that they do not wish to exclude them in any way, but rather, they willingly consent that the parish priests should also participate in the chapter and in the distribution of its resources. Indeed, it is asserted by the Vicar General, by the Bishop, and by a canon theologian, as well as by the parish priests themselves, that the inclusion of the parish priests in the chapter is an ancient and established practice, entirely in conformity with the laws of the Church; from which it follows that the parish priests have a rightful and proper claim not only

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to honors, but also to all emoluments, and among these, to the quota of 85 florins. Furthermore, this aforementioned quota is an integral part of the parish benefice, because the parish priests of Bisignano, as such, are counted among the members of the chapter; and therefore, by virtue of being parish priests, they acquire the right to all that which belongs to the members of the chapter, and consequently, also to the quota of 85 florins. Therefore, if this portion were to be taken away from them, the parish benefice would be harmed; and this would seem to be contrary to the prescriptions in title "De Beneficiis Ecclesiasticis Sine Diminutione," chapter 12, book III of the Decretals, in accordance with what the Doctors discuss there, especially Reiffenstuel and De Angelis. And even more so, if one considers the special condition of the chapter of Bisignano, as explained above: there, the parish priests are...

[*Latin ed. p. 498*]

498. BISINIANEN. He maintains the primordial principle that governs the actual and habitual care of souls, whereas the canons are subsequent institutions. Furthermore, "the earlier in time has greater right," a common axiom derived from *Leges* 9 and *Leges* 11 ff., which states: "He who has the greater claim, joined with *Leges* 3 C., is to be preferred," and it agrees with *Regulae* 98 ff. *De Regulis Juris*: "Whenever the cause of profit for both is equal, he is to be preferred whose cause precedes in time." If, therefore, the canons, by reason of precedence and honor, are already established in time, and are judged to deserve superior rights over the parish priests for the preservation of their rights, it would seem that the parish priests, by this very title, possess superior rights than the simple members, because they enjoy a hierarchical precedence over the members. One might object that the parish priests possess certain fixed emoluments and other benefits by reason of their care; therefore, if they suffer a diminution in their quota, and are otherwise provided for, they do not unjustly complain. The Bishop responds that the emoluments of the parish priests are indeed quite small; for this reason, they were made members of the capitular mass. Finally, if it is insisted that the canons have properly and precisely taken the quotas of the parish priests, it could be answered that this has happened primarily through the fault of the canons. For, in order to avoid a burdensome tax, they announced the division of the capitular mass into individual portions, as if they were minor benefices. The cunning demarchus seized upon this matter; and for this reason, he deprived the parish priests of their share of the capitular mass, knowing that two benefits could not be obtained. Furthermore, "no one should impose an unjust condition upon another," *Regulae* 74 ff. *De Regulis Juris*. And "the damage which one suffers through his own fault, he must attribute to himself, not to others," from *Regulae* 86 *Iur. in VI*. Therefore, if the canons have suffered a diminution in their quotas, they must attribute this

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to themselves, and not burden the parish priests. But it could be further questioned whether the quotas in the Bisinian chapter are fixed for each grade of the priesthood.

[*Latin ed. p. 499*]

Concerning the matter of the distribution of revenues, and who should ascend from a lower to a higher rank: it appears that the governing body has precisely usurped the rightful share of the parish priests. Indeed, from the very words of the canons, when they speak of the usurpation by the governing body, the opposite seems to be implied. They write that the treasury retained not only the revenues from vacant benefices, but also those quotas which became due upon the death of simple canons, as well as those of those who were promoted from simple benefices to the rank of parish priests. It is not clear whether the treasury usurped the quota of the simple canon who had already relinquished his position due to promotion, or rather, the quota that the promoted canon would have preferred to retain. But if, in the hypothesis that these quotas were not firmly attached to any particular office or rank, it would seem pointless to speak of the governing body's theft, as if the parish priests had been deprived of their quotas by force. On the other hand, other considerations must also be taken into account. If, of the twenty-nine quotas remaining, nine are assigned to the parish priests, then the majority of the chapter would be composed of parish priests. And since these, at certain times of the year, e.g., at Easter time, or even on the major feast days, can be present in their parishes, and there perform their parochial duties, it will happen that the cathedral church will be almost deserted on these days, or that only a few canons will be present in the choir, while the lower order of beneficed clergy will be absent. This evil, it seems, cannot be remedied except by the preservation of the simple canons, who are distinct from the parish priests, so that they may be free to serve in the choir. But the preservation of the simple canons' participation is closely linked to the assignment of quotas; and perhaps a distinction would be made if the aforementioned quotas were assigned to the parish priests instead of to the simple canons. Therefore, although it is important to protect the parish priests in the current situation, and to prevent any reduction in their income, it seems equally important not to diminish and impoverish the divine worship of the church, and to protect the simple canons, even if it causes some loss to the parish priests. DEFENSE OF THE CANONS. Even more so, since the parish priests, although their quotas are diminished...

[*Latin ed. p. 500*]

500. Those who held the *bisinianen* [a type of benefice], although they did not possess a parish, nevertheless, by simultaneously holding an uncertain benefice, providing the parochial duties, and receiving the choral

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distributions, which they acquired through interest, seemed to obtain sufficient profit for the honest sustenance of life. On the other hand, those participants who were private individuals, and whose income was increased only by the choral distributions, could scarcely, perhaps, live. And moreover, it did not seem that any certain law of justice was violated; indeed, it appeared to be just and equitable if these frequently mentioned portions were granted to the participants rather than to the parish priests. For although it was true that the *praebenda* [benefices] were not fixed and distinct for each grade of the priesthood, and consequently the government could not have usurped those of the parish priests in their entirety; nevertheless, it always remained that the government, under one pretext or another, considered the parish priests in a more restrictive manner, and not the canons or simple participants. Indeed, theft occurred in this matter by the treasury; but he who has suffered the damage must bear it; and it would seem unjust and inequitable to transfer it to another innocent and blameless person. This principle, although in a different matter, could nevertheless be analogically illustrated from what is stated in title 3, book 3, sections 39 and following, concerning the prevention of water and rainwater, where a remedy is given against him who diverts rainwater onto another's property. Thus, indeed, Voet, in book 39, title III, sections 39 and following, number 5, states: "Another part of the title is: concerning the prevention of rainwater - by means of a remedy; and its foundation seems to be that no one can introduce water or something similar onto another's property without servitude." L. S. 8, §. Aristo 5 and following. If servitude is claimed. Therefore, he acts wrongly if, by means of manufactured works, or even by plantings or deposits of salt, he causes water to flow onto a neighboring property, or if, by altering nature, the flow is greater, or more rapid, or more violent. L. I §. But this, according to Trebatius 3, sections 39 and following, is a right belonging to the owner of the property to which the rainwater, that is, the water falling from the sky and causing moisture, is harmful, due to a manufactured work on the neighboring property. L. Quamquam 4 §. The same Julianus states...

[*Latin ed. p. 501*]

BISINIANEN. 501, end, folios 4, concerning the lord who, whether by himself, or through a colony, or through another, has caused a work to be done on his property, by which water flows. L. If in public, 18 L. Concerning the prince, 23 §. last, folios, h. t. ». Cf. Heineccius, h. t., note 139. Therefore, if no one is permitted, according to the doctrine of Roman law, to divert rainwater, which harms his own property, by means of an artificial construction onto the neighbor's property, or, in other words, if no one is permitted to transfer his own damage onto the next; then certainly, in the matter of the parish, it would be unjust to transfer the deprivation of the quota, which they themselves have suffered, onto those who participate

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[in the parish]. Finally, the very principle of utility is fitting. For a hope, certainly not to be scorned, smiles upon the parish priests, rather than upon those who participate, namely, the hope of obtaining the restitution of their own quotas. For if they prove that those portions are an integral part of the parochial benefice, the treasury, which holds them according to the law of robbery, would be compelled to restore those very portions. But it seems false to say that the canons are to blame, if those quotas were usurped by the parish priests; indeed, according to their assertion, they would have experienced everything for the salvation of souls. With these things noted on both sides, the purpose was to resolve the question: Can parish priests be excluded, or rather, must they participate, in the canonical quotas which are still paid by the government to the chapter in this case?

RESOLUTION. The Sacred Congregation, having considered the matter on January 23, 1886, decided to respond: It pleases Us to decree, for the sake of concord, of good, and of equity, that it is to be arranged by the bishop.

[*Latin ed. p. 502*]

502. THEATINE ECCLESIASTICAL MATTER. September 19, 1885. Through summary petitions. SUMMARY OF THE CASE. Nicholas Marulli and Paschalis Pantalone, both natives of the Theatine Diocese, and having applied themselves to studies for some years in the Lancian Seminary, requested dismissal letters from the Theatine Ordinary, so that they might be duly promoted to the minor orders through the Archpriest of Lanciano. However, the Theatine Archbishop did not deem it fitting to grant their requests; rather, he commanded them to present themselves either to some institution for young men in the city of Rome, or to the Seminaries of Ferentino, Anagni, or Subiaco, if they desired to receive the sacred Orders. The young men, Pantalone and Marulli, indicated that they were unable to comply with these commands due to the circumstances of their respective families. However, not accepting such reasons, both addressed the Most Holy Prince [the Pope] with a suppliant letter, earnestly requesting that he might grant them a dispensation from the law of the Innocentian Constitution, which begins "Speculatores," and that he might also grant them excardination from the Theatine Diocese, so that, being incorporated into the Lancian Diocese, they might complete their studies there and receive the sacred orders. When consulted, as is customary, both Ordinaries, namely the Lancian and the Theatine, responded. The former, praising the eager intelligence of the young men, and approving of their divine vocation, strongly supported both of their requests. The other, namely the Theatine, declared that he had little confidence in the scholastic education of the Lancian Seminary; and therefore, unless otherwise judged by the Sacred Congregation of the Council, he would always oppose the education of clerics from his diocese there. SYNOPTIC DISCUSSION. The condition prescribed by the Theatine

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Prelate to the two students is undoubtedly a serious one. WHAT FAVORS THE PETITION.

[*Latin ed. p. 503*]

THEATINA 503, especially when their circumstances are considered. Indeed, both lack sufficient domestic resources; one, Nicholas Marulli, was raised at the expense of his priestly uncle in the Lancian seminary; the other has a widowed mother, younger brothers, and sisters. Therefore, both declare themselves unprepared for any further expense, which they would have to incur in order to go to another city and another seminary. Thus, the order of the Ordinary of Orense would have the effect of necessarily barring the entrance to the clerical state for both students, as both the Ordinary himself and the Prelate of Lanciano confess. The petitioners also remember in their letters of gratitude the place of education where they have resided for about five years, which they consider both serious and unjust to abandon. On this point, the Prelate of Lanciano, who is writing, laments: "The current Archbishop of Theatina, for some unknown, nay, irrational reason, believes that the youth of the Church can be better educated elsewhere than in the Lancian Seminary."

WHAT IS OBJECTED TO THE PETITION. However, the Ordinary of Theatina states: "The reason I prevent the clerics under my jurisdiction from entering the Lancian Seminary is based on the certain fact that, to speak of nothing else, the courses there are deficient, both in philosophy and in theology, and do not at least partially correspond to the desires of the Most Holy Father. The seminaries that I propose to them, until I can again open mine, are well-managed and are economically sound, no less than the Lancian one. And all of this is true, as evidenced by the fact that eighteen of them, some of whom are poorer, are happily residing in those places and are diligently pursuing their studies, and are giving the Diocese great hope." But, if the Sacred Congregation orders it, I will gladly submit to this supreme judgment, and I will freely allow the students to remain in the Lancian Seminary, even if it requires an excardination.

[*Latin ed. p. 504*]

504 THEATINA Having noted these matters, the question arose as to what should be answered to the requests of the Orators. RESOLUTION. The Sacred Congregation, having knowledge of the matter, on September 1, 1885, decided to respond: "Write to the Archbishop, so that, considering the circumstances in this case, he may grant the letters of dispensation." — BOIANO AND THERMULARIUM, OF THE CARDINAL CONSISTORY, December 12, 1885. Through summary requests. SUMMARY OF THE FACTS. The priest William of Boiano, of the Diocese of Boiano, having presented himself this year to the town of S. Giacomo degli Schiavoni, of the Diocese of Thermularum, in order to preach the word of God during Lent,

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the people, moved by his sacred sermons and zeal, earnestly requested the Bishop of Thermularum to appoint him as the pastor of the vacant parish church of S. Maria degli Schiavoni. The Bishop, assenting to the people's wishes, and having become certain that the priest William had obtained permission from the Bishop of Boiano to undertake the care of souls outside his own diocese, admitted him to the competition, and chose him among the others as the pastor of the church of S. Maria. Later, when asked by the Bishop of Boiano to grant a written document of dispensation, he firmly refused, and indeed commanded the priest, under the threat of suspension from divine duties, to return to the diocese as soon as possible. However, the priest would obey the mandate of his own Bishop, unless, as he said, he feared the wrath of the people, who were determined to have him as their pastor, before their altars and hearths. Therefore, he humbly appealed to the Most Holy Congregation, so that it would deign to grant him the grace of dispensation. After the customary requests were made to the Ordinaries of Boiano and Thermularum, the first responded that he had never granted the priest William permission to leave, but had only granted him a *litera*...

[*Latin ed. p. 505*]

BOIANO. And of the Bishopric of Thermara: The Bishop of Thermara, to whom the aforementioned priest was being assigned for further preaching and for an indefinite period, strongly recommends the priest. The Ordinary of Thermara earnestly commends the priest, stating that the entire people have vehemently requested him as their pastor. This people, he says, is of Slavic-Albanian origin, and will dare everything for this purpose, and therefore hopes that the requested grace will be granted. A Synopsis of the Matter. Furthermore, it must be considered that it is not permissible to diminish the rights of the Bishop of origin, unless he reasonably consents, and that a cleric who abandons his own diocese can even be compelled by censures to return; Council of Trent, Session XXIII, chapter 16, concerning Reform; Council of Rome, title 6, chapter 6; with which the Sacred Congregation of Councils, in Senogallien, 1592, and in Nuceria, September 5, 1818, and especially in Rieti, Residence, January 26, 1833, and in Nuceria, Residence and Suspension, March 15, 1828, are in agreement, in which two latter cases, two priests who had abandoned their dioceses without the consent of the Ordinary and had gone to another diocese, where they had obtained a parish benefice, were nevertheless compelled to return. Nor does the Bishop of Boiano seem to be acting irrationally in opposing the granting of excardination; for he states that the city of Campobasso suffers from a lack of priests, and that the priest William has obtained a benefice or participation in the church of Saint Mary of the Cross, which involves personal residence. GRACE SEEMS TO BE WARRANTED. However, on the other hand, it must be considered that the priest William, as he himself asserts, left his diocese with the consent of the Bishop, for which he has

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presented two witnesses who were present at the interview. Even if this were not proven, or were not true, there would still remain the insistent desire of the people of Saint James, a desire that arises from a just cause. GRACE SEEMS TO BE DENIED.

[*Latin ed. p. 506*]

506 BOIANO. And furthermore, the danger of a disturbance might also persist should the same priest depart, making the future provision for the parish difficult. Given these circumstances, the Eminent Judges were asked to determine whether these reasons of public order were sufficient grounds for granting the dispensation, despite the opposition of the proper Bishop, especially since it is not customary to grant such a dispensation even for reasons of private good, such as entering a religious order, or even a simple religious congregation; as happened in one case in Marsorum on September 7, 1833, at the urging of the priest Sanctarelli, who had entered a group of secular priests from the precious blood of Christ. Indeed, the Sacred Congregation responded to the Bishop who had requested it: "The priest Nicholas Sanctarelli should not be disturbed, as long as he perseveres in the group about which he prayed." With these matters stated, the question was raised as to how these requests should be handled. RESOLUTION. The Sacred Congregation, having considered the matter on December 12, 1885, responded: Write to the Bishop of Boiano, in the following terms: Indeed, it appears to this Congregation that there are sufficient reasons for granting the dispensation; however, the Congregation should be informed about the revenues that the priest William actually possesses, and if he has any reasons to the contrary, he should present them.

BOSANA. DISPENSATION FROM THE IMPEDIMENT OF MATRIMONY. December 12, 1885. Through Summary Petitions. SUMMARY OF THE CASE. Vincent Carboni, a citizen of Bosana, pursued a certain Iosepha Santini, of the Diocese of Sassari, and defiled her, and conceived a child with her. After several months had passed, the man departed from her, leaving the child with the woman, without celebrating marriage before the Church. Instead, abusing the so-called civil law, he entered into a civil contract with Iosepha Mastinu, a young woman.

[*Latin ed. p. 507*]

BOSA. At the age of 507 years. Under these circumstances, Iosepha Santini brought a case before the Bosa ecclesiastical court against Vincent Carboni, alleging that he was bound to her by the bond of betrothal and therefore opposed any marriage of his; on the other hand, Vincent himself, shortly thereafter, also approached the episcopal court, initially desiring to return to his first wife in order to legitimize offspring; then, however, terrified by more serious difficulties that stood in the way of marriage with Iosepha Santini, he requested permission to marry before the Church with

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Iosepha Mastinu. From the duly initiated and completed process by the episcopal court, it is established that the betrothal was valid; hence, the difficulty arises regarding the dispensation from the existing betrothal.

A SYNOPTIC DISCUSSION OF ARGUMENTS AGAINST THE DISPENSATION. Several arguments seem to weigh against the dispensation. First of all, the valid betrothal obliges, by justice, to enter into marriage; for, where there are true betrothals, a true contract exists in a serious matter, and therefore a serious obligation follows. Moreover, if it is considered that Vincent has conceived offspring from these betrothals, it is clear that he is bound not by one, but by two bonds to marriage: namely, by the force of the betrothal and by the force of the damage caused; Sánchez, *Disp.* 48, n. 5, *De Matrim.*. He cannot even appeal to the civil marriage contract that he has now entered into with Iosepha Mastinu, in order to be able to dissolve the prior betrothal with Iosepha Santini; since, "no one can improve his condition through his own fault," Ulpian, I. 21, *ad Edictum*; and "what a man does should not harm his neighbor," Paul, I. 65, *ad Id.*. Finally, the condition of the deceived and unfortunate woman must be seriously considered, who may never marry another man, and will always be burdened with the support and education of the offspring she has borne, which seems to be an excessive burden for a poor woman; hence, it seems justified that she should oppose Vincent's marriage.

[*Latin ed. p. 508*]

BOSANEN. WHAT FAVORS THE DISPENSATION. However, it must be considered that, on the one hand, the man is forbidden, under a severe penalty, from abandoning the woman with whom he entered into a civil marriage with, namely, Iosepha Mastinu, and is, indeed unjustly, compelled to remain with her. I refrain from speaking of the threats that Iosepha Mastinu made, promising the man's death if he should abandon her; furthermore, she amplified other, no less serious, threats against him, if he should present her before the Church as his rival. Nevertheless, it seems certain that the man has been rendered in some way incapable of returning to his former wife; and, as is well known, there is no obligation where impossibility exists. Certainly, the dispensation could be denied, and even the man could be compelled to keep his bride, under the threat of censures. However, censures often have a difficult effect in these matters, as is recalled in Pistorien, concerning the dispensation of marriages, which was acted upon on June 7, 1856, by the summary request; furthermore, denying the dispensation may perhaps signify nothing other than prolonging and solidifying the state of sin in the petitioner. That the dispensation, however, opens an easier path to similar abandonments, this may be true; but this evil will not be without some good: for the brides will become more prudent in the future, so that, as the Ordinary notes, they will not dare to foster illicit affections before marriage. With these considerations, the ques-

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tion is asked: what should be decided in this matter? RESOLUTION. After having knowledge of the matter, the Sacred Congregation, on December 12, 1885, decided to respond: After a prior compensation from the part of the petitioner, to be determined by the Bishop, both for the damage inflicted and for the education of the children, for the granting of absolution and the dispensation from the beginnings of the marriage, let the matter be brought to the attention of the Most Holy.

[*Latin ed. p. 509*]

S09 EX 8. CONGREGATO IN IDULGENTIIS

DECREE OF THE CITY AND THE WORLD

The most holy Name of Jesus has always and everywhere been held in the highest veneration and with singular honor by the faithful; for there is no other name given under heaven, in which we must be saved (Acts IV, 12). To this signification of veneration and honor, Christian piety has devised many observances and praises, by which the most august Name may be worthily and holily celebrated. Indeed, many litanies have been composed in honor of the Most Holy Name of Jesus, which, although not all are equally commendable, have nevertheless been widely spread throughout the world. To prevent any lack of uniformity in this kind of devotional practice, the Most Holy Pope Pius IX, through the Sacred Congregation, approved, on June 8, 1862, the Litanies of the Most Holy Name of Jesus, which alone are to be retained henceforth by all the faithful, and granted to the same Sacred Congregation the faculty of declaring that to the faithful who shall have recited these litanies devoutly, an Indulgence of three hundred days shall be granted, in the usual form of the Church, provided that the Sacred Ordinaries have specifically requested this grace for their respective dioceses. Now, since recently many Bishops have presented prayers to the Most Holy Lord Leo XIII, by divine providence, that he would deign to grant this very Indulgence to the faithful of their dioceses who recite the aforementioned litanies, and desiring that the piety of the Christian people towards the praiseworthy Name of Jesus may be fostered and increased ever more, and devotion may grow, especially in these times in which that most august Name is so boldly and so frequently attacked by the injuries of the impious, in an audience held on January 16, 1886, before the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, His Holiness benignly extended the aforementioned Indulgence of three hundred days, applicable also to the souls in Purgatory, and to be gained only once a day, to all the faithful of both sexes, who shall have recited, at least with a contrite heart and devoutly, the Litanies of the Most Holy Name of Jesus, as are set forth in the present Decree, and in no other

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way. This grace His Holiness wished to grant perpetually and without any Brief. Notwithstanding any contrary decrees. Given at Rome, from the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, on the 16th day of the month of January, in the year 1886.

L. B. CARD. FRANZELIN, Prefect.

FRANCISCUS DELLA VOLPE, Secretary.

[*Latin ed. p. 510*]

LITANIES OF THE MOST HOLY NAME: Kyrie eleison. Christe eleison. Kyrie eleison. Jesus, hear us. Jesus, attend to us. Father of heaven, God; Son, Redeemer of the world, God; Holy Spirit, God; Holy Trinity, one God; Jesus, Son of the living God; Jesus, splendor of the Father; Jesus, brightness of the eternal light; Jesus, King of glory; Jesus, sun of justice; Jesus, Son of the Virgin Mary; Jesus, most lovable; Jesus, most admirable; Jesus, God mighty; Jesus, Father of the future age; Jesus, Angel of the great counsel; Jesus, most powerful; Jesus, most patient; Jesus, most obedient; Jesus, meek and humble of heart; Jesus, lover of chastity; Jesus, our lover; Jesus, God of peace; Jesus, author of life; Jesus, example of virtues; Jesus, *zela* of souls; Jesus, our God; Jesus, our refuge; Jesus, Father of the poor; Jesus, treasure of the faithful; Jesus, good shepherd; Jesus, true light; Jesus, eternal wisdom; Jesus, infinite goodness; Jesus, our way and our life; Jesus, joy of the Angels; Jesus, King of the Patriarchs; Jesus, Master of the Apostles; Jesus, Doctor of the Evangelists; IN THE NAME OF JESUS, have mercy on us. have mercy on us. have mercy on us.

Deliver us, Jesus. Through your most divine life, deliver us, Jesus. Through your labors, deliver us, Jesus. Through your agony and passion, deliver us, Jesus. Through your Cross and your abandonment, deliver us, Jesus. Through your pains, deliver us, Jesus. Through your death and burial, deliver us, Jesus. Through your Resurrection, deliver us, Jesus. Through your Ascension, deliver us, Jesus. Through your joys, deliver us, Jesus. Through your glory, have mercy on us, Jesus. Lamb of God, who takes away the sins of the world, Jesus. Lamb of God, who takes away the sins of the world, hear us, Jesus. Lamb of God, who takes away the sins of the world, have mercy on us, Jesus, hear us. Jesus, hear us.

Let us pray. O Lord Jesus Christ, who said: Ask, and you shall receive; seek, and you shall find; knock, and it shall be opened to you: we beseech you, grant to us who ask, the affection of your most divine love, that we may love you with all our heart, with all our soul, and with all our strength, and that we may never cease from praising you. May we always have both the fear and the love of your holy Name, O Lord, perpetually, because you never forsake those whom you have established in the firmness of your love. Who lives and reigns, etc.

[*Latin ed. p. 512*]

512 FROM THE APOSTOLIC PENITENTIARY • vol. - QUESTIONS and answers concerning the Holy Jubilee. Question I. On March 11, 1886. In the Apostolic letters, in which this year's Jubilee is announced, two fasts are prescribed; however, nothing is expressly stated as to whether these fasts must be observed in the same week; therefore, the question is asked: Can these two fasts be observed on two days of the same week? To this question, the Apostolic Penitentiary responded on March 11, 1886: In the negative. Question II. On March 18, 1886. Since, for just reasons, the works prescribed by the Holy Father can be changed when someone first obtains the Jubilee; the question is asked: Can these same works be changed in favor of those who desire to repeat the Jubilee? To this question, the same Apostolic Penitentiary responded on March 18, 1886: In the affirmative (1). (1) See page 333 and following in this volume.

[*Latin ed. p. 513*]

513 FROM THE CONSISTORY ACTS. The Secret Consistory of June 7, 1886. In this Consistory, the Most Eminent and Reverend Lord Louis, Cardinal Jacobini, as Procurator, and by virtue of the authority granted to him by the Most Holy Father, our Pope, in the absence of the Most Eminent and Reverend Lord Dominic, Patriarch of Venice, having relinquished the titular see of Saint Eusebius, the presbyteral office of Saint Mary of Peace in this beloved City, vacant by the death of the Most Reverend Master John Ignatius, formerly Cardinal Priest Moreno, who, while still living, held that titular see outside our Court, and having since passed away. Then, Holiness

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delivered the following address: Venerable Brothers. We have summoned you today to this Sacred Consistory not only to grant new Bishops to the Christian churches of the world, which are in need of pastors, but also to consider the creation of Cardinals, which, it seemed to Us, was a matter of honor and splendor for your College, and which the condition of times demanded. We are grieved that many of you have passed away in recent years, and We have decided to appoint others to take their place. Moreover, since Our Apostolic solicitude extends to all Catholics of various nations, whom We embrace with paternal charity, and We are exceedingly pleased when an opportunity arises to demonstrate Our inclination towards them, We deemed it fitting on this occasion to select certain distinguished Bishops from various regions of the old and new world, to be co-opted into your order. And first, We turn Our attention to France, where most learned prelates, with fervent zeal and steadfast purpose, are wonderfully devoted to the Apostolic See, and in themselves offer a most excellent and worthy example of unity with the Head of the Church; and the faithful, entrusted to their care, are almost countless.

[*Latin ed. p. 514*]

514 FROM THE CONSISTORIAL ACTS, they ceaselessly demonstrate their love for the Church and their unwavering faith in the Vicar of Jesus Christ, through works of piety and charity, even amidst grave difficulties; and they readily expend their strength and resources for the defense of the Catholic cause. Therefore, through the renunciation of these Cardinals, we hereby publicly and singularly pledge our affection, both to the sacred order of those who preside over the churches of Galliae, and to the entire Gallic people, and we resolve to strengthen those bonds of love and obedience which unite this generous nation with the Roman Church and the Roman Pontificate. The United States of America and the Canadian region now call to mind our attention. — The condition of the Catholic religion flourishes in that confederation, expanding more and more each day, and increasing with new growth; moreover, its constitution and form are increasingly conformed to the laws of the sacred canons; they seem to urge us, and almost implore us, to receive another bishop from among the principal regions into the College of Cardinals. As for the Canadians, it is known to all how firmly they adhere to the Catholic faith, how sincerely they are devoted to the Church, and how clearly they have demonstrated their piety and fidelity to the Roman Pontiff, even in difficult times. For this reason, we do not doubt that the elevation of one of the Canadian archbishops to such a dignity will be a source of honor for the Catholic religion, and will work for the good and happiness of the Canadian people, and will increase and strengthen their ready and upright devotion to the Roman Church. Therefore, these are the ones whom we have decided to refer to your College today, namely: VICTOR FELIX BERNADOU, Archbishop of Senonensis

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and Antissiodorensis; ALEXANDERT ASCHERE AU, Archbishop of Quebecensis; BENEDICTUS MARIA LANGÉNIEUX, Archbishop of Rhemensis; JACOBUS GIBBONS, Archbishop of Baltimorensis; CAROLUS PHILIPPUS PLACE, Archbishop of Rhedonensis. All of whom are distinguished by their ardent zeal for the advancement of the Catholic religion and for the care of souls, and are highly recommended for their obedience to this Apostolic See and for their prudence in the conduct of affairs.

[*Latin ed. p. 515*]

FROM THE CONSISTORY ACTS 515. Nor have we overlooked Italy, from which we deemed it fitting to raise to the same honor: AUGUSTUS THEODOLI, a most distinguished member of the Roman clergy, an archpriest of AUGUSTUM, who, having diligently fulfilled various offices and duties, recently discharged the duties of the Prefecture of Our Pontifical House with great faith and diligence; and CAMILLUS MAZZELLA, a member of the Society of Jesus, renowned for his distinguished teaching and equally praised for his virtue. What do you think? Therefore, with the authority of Almighty God and of the holy Apostles Peter and Paul, and with Our own authority, We create and publicly proclaim the following Cardinals: VICTOR FELIX BERNADOU, ALEXANDER TASCHEREAU, BENEDICTUS MARIAM LANGENIEUX, JACOBUM GIBBONS, CAROLUM PHILIPPUM PLACE, and the following Cardinal Deacons: AUGUSTUS THEODOLI, CAMILLUS MAZZELLA. With the dispensations, regarding the petitions and clauses necessary and appropriate. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. Furthermore, the Holy See proposes the following churches: THE METROPOLITAN CHURCH OF TOLEDO, vacant due to the translation of the Most Reverend and Illustrious Lord Zephyrinus, Cardinal Priest of the Holy Roman Church, Gonzalez and Diaz Tuñon, of the Order of Preachers; and the Metropolitan Church of SS. Quirici et Iulittae of Rome, the same Most Reverend and Illustrious Lord Michael, Cardinal Priest of the Holy Roman Church, Paya and Rico, to the Archbishopric of Compostela, due to the recent death of the Most Serene King of the Catholics. THE METROPOLITAN CHURCH OF SURRENTIN, vacant due to the death of the Most Reverend Lord Leopold Ruggiero, the last Archbishop of that see, outside the Roman Curia, favored by the Most Reverend Lord Joseph Giustiniani, a priest of Naples. Who, born of legitimate, Catholic, and honorable parents in Naples, and having surpassed his fifty-first year, and who, some time ago, received the doctoral degree in sacred theology,

[*Latin ed. p. 516*]

516 FROM THE CONSISTORY ACTS: The most recent Rector of the urban seminary, and formerly a Canon in the Neapolitan metropolitan arch-

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diocese, has resigned.

THE CATHEDRAL CHURCH OF VARAD: Vacant, due to the death of the Most Reverend Stephen John Lipovniczki, the last Bishop, who died outside the Roman Curia. The Most Reverend Arnold Ipolyi-Stummer, Bishop of Neusohl, is to nominate a successor, by the favor of His Imperial Majesty Francis Joseph I, Emperor of Austria.

THE CATHEDRAL CHURCH OF NOVARI: Vacant, due to the death of the Most Reverend Stanislaus Eula, the last Bishop, who died outside the Roman Curia. The Most Reverend David Riccardi, Bishop of Ipporeggio, is to nominate a successor.

THE CATHEDRAL CHURCH OF REGIEN: Vacant, due to the death of the Most Reverend Gideon Count Rocca, the last Bishop, who died outside the Roman Curia. The Most Reverend Vincent Manicardi, Bishop of Burg s. Domnini, is to nominate a successor.

THE EPISCOPAL TITULAR CHURCH OF LEUCEN: Vacant, due to the translation of the Most Reverend Ignatius Lobos to the Cathedral Church of Tarnów. The Most Reverend Caietan Bacile e Dynastis Castelionis, a missionary Bishop of the Cathedral Church of Castellaneta, is to nominate a successor.

THE CATHEDRAL CHURCH OF CASALEN: Vacant, due to the death of the Most Reverend Peter Mary Ferre, the last Bishop, who died outside the Roman Curia. The Most Reverend Philip Chiesa, Bishop of Pinerolo, is to nominate a successor.

THE CATHEDRAL CHURCH OF AVERSA: Vacant, due to the death of the Most Reverend Dominic Zelo, the last Bishop, who died outside the Roman Curia. The Most Reverend Charles Caputo, Bishop of Monopolitano, is to nominate a successor.

THE CATHEDRAL CHURCH OF MONOPOLITAN: Vacant, due to the translation of the Most Reverend Charles Caputo to the See of Aversa. The Reverend Francis d'Albore, a priest of the archdiocese of Capuana, is to nominate a successor.

He, born of legitimate, Catholic, and honorable parents in the town of Casapulla, in the archdiocese of Capuana, having surpassed his fifty-seventh year, and having been assigned as an examiner among the Pro-Synodal examiners, fulfilled the office of spiritual director of the youth sodality.

THE CATHEDRAL CHURCH OF CASTELLANETA: Vacant, due to the voluntary, willing, and freely made resignation of the Most Reverend Caietan Bacile e Dynastis Castelionis, which was carried out and accepted by the HOLY SEE. The Reverend Father Iucundus of St. John Rotundo, of the Order of the Friars Minor of the Observance of the Reform of St. Francis, a priest of the archdiocese of Manfredonia, is to nominate a successor.

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Father Iucundus, in the world Matthaeus de Nittis, was born of legitimate, Catholic, and honorable parents in the town of St. John.

[*Latin ed. p. 517*]

FROM THE CONSISTORY ACTS:

The son of Rotundo, born in the archdiocese of Manfredonia, and having surpassed his forty-eighth year, having served as Master for professed clerics, as a Reader, as a Custos, as a Definitor, and until now as Provincial Minister in the province of St. Angel of Apulia, has resigned.

The Cathedral Church of Liburnia is vacant, due to the death of the Most Reverend Remigius Pacini, the last Bishop of that see, who died outside the Roman Curia, with the favor of the Reverend Leopold Franchi, a priest of Prato. He, born of legitimate, Catholic, and honorable parents in the city of Prato, and having surpassed his sixtieth year, having served as the Predecessor in moral theology at the seminary of Prato, and having been co-opted among the pro-Synodal examiners and among the deputies concerning the discipline of the clergy and the administration of the seminary, and being a Canon of that Chapter, and Vicar General for spiritual matters of the same diocese, has now resigned.

The Cathedral Church of Fidentina, or St. Dominic of Burgos, is vacant, due to the translation of the Reverend Vincent Manicardi to the Cathedral See of Regiae, with the favor of the Reverend John Baptist Tescàri, a priest of the diocese of Vicenza. He, born of legitimate, Catholic, and honorable parents from Breganti in the diocese of Vicenza, and being in the second year beyond his sixtieth year, having been chosen as the Rector of that institution, having taught mathematics and universal history in the lyceum of his native seminary.

The Cathedral Church of Pinerolien is vacant, due to the translation of the Reverend Philip Chiesa to the See of Casale Monferrato, with the favor of the Reverend John Mary Sardi, a priest of the diocese of Asti. He, born of legitimate, Catholic, and honorable parents in the town commonly called Rocchetta Tartaro of the diocese of Asti, and being in the first year beyond his sixtieth year, having been raised to the second dignity of Archdeacon in the Cathedral itself, and having been Vicar General for spiritual matters of the same diocese until now, has resigned.

The Cathedral Church of Ipporegien is vacant, due to the translation of the Reverend David Riccardi to the See of Novara, with the favor of the Reverend Augustine Richelmy, a priest of Turin. He, born of legitimate, Catholic, and honorable parents in Turin, and being in his thirty-sixth year, having been co-opted into the college of theologians, and having been chosen as the Superior of the monastery of the Most Holy Rosary, and having been added among the pro-Synodal examiners, and among the honorary

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canons of the metropolitan church.

The Cathedral Church of Trident is vacant, due to the death of the Most Reverend.

[*Latin ed. p. 518*]

S18 FROM THE CONSISTORY ACTS: Concerning John James Delia Bona, the last of that number, who died outside the Roman court, by the favor of the Reverend Doctor Eugene Charles Valussi from the archdiocese of Udine, for the nomination of the Most Holy Majesty of Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, by the power of the Apostolic Indult. He, born of legitimate, Catholic, and honorable parents in the town called Talmassons of the archdiocese of Udine, having surpassed the forty-ninth year of his age, having been co-opted among the Pro-Synodal Examiners, having served as an Assessor in ecclesiastical judgments, having been appointed Vicar Capitular in the Gorizia See while it was vacant, and having previously been the Prefect of the Chapter of that metropolis, renounced these positions. The CATHEDRAL CHURCH OF THE NAME OF JESUS in the Philippine Islands, vacant due to the death of the Most Reverend Benedict Romero de Madrideios, the last of that number, who died outside the Roman court, by the favor of the Reverend Father Martin Garcia Alcocer, a priest of the archdiocese of Toledo and a solemnly professed member of the Order of the Friars Minor of the Observance of Discalced St. Francis, for the presentation of the Most Serene Queen, Catholic Regent. He, born of legitimate, Catholic, and honorable parents in the place commonly called Albalaie de Zorita of the archdiocese of Toledo, having been appointed in the forty-fourth year of his age, having solemnly professed his vows in the Order of the Friars Minor of the Observance of Discalced St. Francis, having served as a Master, once and again, among the novices, in two colleges of his Order, and having today performed the office of Rector of the College of St. Francis of the Discalced Fathers for the Philippine Islands in Villa Paterniana. The TITULAR EPISCOPAL CHURCH OF LETE, under the Archbishop of Thessalonica, vacant due to the translation to the titular archiepiscopal Church of Ephesus of the Reverend Doctor Tobias Kerby, by the favor of the Reverend Philip Degni from the dynasty of Salento, a priest of Naples, who was also appointed as an assistant to the Eminent and Reverend Lord William Cardinal Sanfelice de Aquavella, Archbishop of Naples. The Reverend Philip Degni, born of legitimate, Catholic, and noble parents in Naples, having surpassed the forty-seventh year of his age, was chosen to examine the clergy in theology, and to revise their discipline, and was appointed as the Superior of perpetual adoration. Among the visitors of pastoral inspections, and as a Consultant for the affairs of the Archiepiscopal table, he was appointed as the renunciant for the cause of the Servant of God, Philip Massarenchi. The TITULAR

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EPISCOPAL CHURCH OF DERBEN, under the Archbishop of Antioch in Pisidia, vacant due to the translation to the titular Church.

[*Latin ed. p. 519*]

FROM THE ACTS OF THE CONSISTORY: The archiepiscopal see of Ancyra was assigned to the Reverend Father John Cirino, with the favor of the Reverend Vincent Alda and Sancho, priests of the diocese of Tarazona, for presentation to Her Most Catholic Majesty the Regent; who was also appointed as an auxiliary to the Most Eminent and Reverend Lord Francis of Paula, titular of Saint Thomas in Paris, in the city of Rome, to the Sacred College of Cardinals, namely Dena and Navarrete, Archbishops of Caesaraugusta. The Reverend Vincent Alda and Sancho, born of legitimate, Catholic, and honorable parents in the place commonly called Calmarza, in the diocese of Tarazona, and having surpassed the age of forty, being an examiner of the diocese, both ecclesiastical and pro-synodal, and having served as Rector of Sepulveda in the seminary, and acting as a preacher of the Word of God in the Royal Catholic Court and as a canon of the Chapter of Segovia, having resigned from the office of General Vicar of the Most Eminent Archbishop of Caesaraugusta and from the office of Archdeacon of that Metropolitan Archdiocese.

FROM THE THIRD MEETING OF THE CONGREGATION CONCERNED WITH THE OPTIONS AND EXECUTION OF DECREES OF THE COUNCIL OF ORTONA, January 23, 1886, Session 5, Chapter 1, concerning reforms. A SUMMARY OF THE CASE: Vincent Stagioni, a canon and theologian of the cathedral church of Ortona, stated that the theological prebend he was to receive was less than those which any canon of the chapter could obtain, together with the right of option. Therefore, he requested that some pension be imposed in his favor on one or another of the more valuable prebends of the chapter. In response to his request, it was decreed on February 16, 1884, "that the particular case should be considered, in which a suitable prebend becomes vacant, to which the requested pension could be assigned." However, when the canon and dean, Paolini, was afflicted by a serious illness, without hope of recovery, canon Stagioni again petitioned, concluding his supplication with these words: "If, therefore, the circumstances are not favorable for granting a suspension of rights..."

[*Latin ed. p. 520*]

520. ORTONEN. The advocate requests a pension of 40 ducats from the prebend of Saint Paul, which was expected to become vacant shortly. The Ordinary, when consulted, reported that the chapter opposed the canon's petition; for the theological, penitentiary, and archidiaconal prebends have been excluded from option in that chapter for many centuries, and no one from Le Conquet has been appointed to them. Then, a response was sent

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to the advocate: "As requested, it cannot be granted; but, considering, etc., for the sake of grace, that when the aforementioned prebend of Saint Paul becomes vacant for the first time, the prebend currently held by the theologian may, with the option of the chapter, be separated from the current prebend and transferred to the aforementioned prebend of Saint John, and permanently attached to it; and that the advocate may obtain it without a new collation and possession, so that the current prebend of the theologian will succeed to the prebend of Saint John, and the option will be subject to the judgment and conscience of the Archbishop administrator, contrary to what has been stated, etc., by a Brief, etc."

Meanwhile, before the apostolic Brief favorable to Canon Stagion could be issued, on January 17, 1885, the dean of Saint Paul died; and the canons, who claimed to have been unaware of the grace and the response obtained by Stagion, proceeded with the option, which, they say, the government approved, placing the last prebend remaining from the option in the hands of the advocate. From this, a dispute arose as to whether the option made, or rather, the response of September 22, 1884, prohibiting the option, should be upheld.

Dispute: Synopsis of the RIGHTS OF THE THEOLOGIAN. Indeed, at first glance, this response seemed to be incapable of being invalidated in any way, and therefore, the option made by the chapter was entirely valid, and rightly, Canon Stagion insisted that the prebend of Saint John be granted to him in virtue of the response. For it is well known in ecclesiastical jurisprudence that, while in matters of justice, or in lawsuits, the time of presentation is considered; in re-

[*Latin ed. p. 521*]

SECTION 521. Regarding documents pertaining to graces, or to benefits, or to privileges, and the like, attention must be paid to the date on which they were issued, that is, the date "when the letters were given or dispatched," as Reiffenstuel states in title *de rescriptis*, § 3, no. 71. And this is the common opinion of the Doctors, as seen in Ferraris, *v. Rescriptum*, no. 16; Baldi, *in c. Sicut romana*, no. 18, in the aforementioned title; Rebuffi, *Prax benef.*, title *Differentia inter r eser. grat. etc.*, no. 33; Barbosa, *in Capit. S. Crucis*, no. 8, in the aforementioned work; Engel, *eod. tit.*, no. 18, and others. Therefore, from the date on which the letters of grace were issued or dispatched, the right is immediately acquired, unless something else prevents it. This is admitted by the Doctors in the aforementioned passages, and it is inferred from chapter 7, title *de rescriptis*, where it is stated: "You should have done this in no way, if you had more carefully examined the given letters." And it is in agreement with chapter *Constitutus* 19, with the Glossa, and with *Impetrasset* in the same work, where, likewise, in a rescript concerning a benefit, the date of issuance is considered; as well as in chapter *Eum cui* 7, *De praebend.*, in VI, where

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it is stated in summary: "In the petition for benefits, the date is considered, not the presentation or reception." Indeed, papal grace is perfected by the mere signature, as the Rota decided in 418, no. 3, page 1, *divers.*; and even by the mere word of the prince, grace is considered perfected, as the Rota decided in *Bononiensi*, *De Binarinis*, on March 5, 1618, before D'Andrea. Nevertheless, for the sake of truth, it must be said that it is generally understood that "the Pope signed the petition from the day that appears below, completed by the date assigned by the person appointed by the Pope for this office," as Reiffenstuel states, *I. cit.*, no. 74; Barbosa, *lib. 3 Iuris eccles. univ.*, chapter 13, no. 199, and it is clearly evident from regulations 27 and 52 of the Apostolic Chancery. Therefore, in the matter at hand, since not only has the grace been signed by the Supreme Prince, but also the letters were dated September 22nd, or formally dispatched by the Secretariat of the Sacred Congregation, it seems that there is no doubt that this grace is valid, and that the prebend of St. John has already, from September 22nd, been subject to the favor of the canonists.

[*Latin ed. p. 522*]

522 ORTONA. It is permissible to consider the case of the canon regulars of Ortona, who, unaware of the papal reservation, had already sought to obtain the aforementioned vacant benefice and had already come into possession of it. Indeed, if the Pope has already conferred a benefice, either by a mandate to provide for someone, or by a grant of expectation, or in any other way, a subsequent collation by an inferior judge, even if performed ignorantly, is entirely null and void; as Schmalzgrueber teaches in title De praeb., n. 44: "He (the Pope) sometimes confers (benefices) by right of preemption, by granting someone a grant of expectation, or by a mandate to provide, or by ordering that a benefice which is about to become vacant be conferred upon someone: for by this collation the Pope preempts the right of others to confer; so that collations made by these others, even if they are ignorant, are invalid, and the apostolic provision must be preferred; cap. Dudum 14 De praeb., in VI, Layman I. 4 tr. 2 c. 10 n. 2, Leuren, p. 2 ser. 3 c. 3 q. 513 n. 1 seqq." Furthermore, the option, for the purpose in question, seems to be to be considered in the same order as the collation; because, in the end, the option is nothing other than a certain method, just like the collation, for obtaining a benefice. And it is also permissible to consider that the apostolic grant was uninformed at the time when the option was made, since the apostolic letters, in the form of a Brief, had not yet been issued, and therefore the Ordinary had not been ordered to execute them. Indeed, since the pontifical grant was promulgated by letters from the Secretariat of Ordinary Causes on September 22, 1884, it did not seem to be uninformed due to the lack of letters. Moreover, the Apostolic Datary, when consulted in due time before the lawsuit, could not have refused to send the Brief, nor could the Ordinary have refused to execute it; both of them would then

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have been necessary executors of the apostolic rescript in this particular case, and not as voluntary executors. But if the executor is necessary, the grant is made, and it is not to be made, as Reiffenstuel teaches in title De rescrip., n. 257.

[*Latin ed. p. 523*]

ORTONEN. 523 seqq. demonstrate that the Doctors, especially Rebuffus in *De mand.* §. i, and Suarez in *De censur.* Disp. 24, sect. 2, teach that "Indeed, if one is a necessary executor, ordered to carry out a dispensation, knowing the truth of the petitions... then such a dispensation is considered to be granted in favor of the petitioner." Furthermore, those formulas do not impose upon the Bishop, and the freedom of execution is granted to the Bishop; this is demonstrated in Meten, in the acts before the Sacred Congregation, in the month of July 1883. Therefore, it would seem to be of little benefit to confirm the option of the chapter of Ortona, and to deny the right sought by the canon of Stagini, that the apostolic letters, not having been previously reported by him and ordered for execution by the Ordinary, were not in the *forma* of a Brief. However, in practice, one might doubt whether the chapter was ignorant of the pontifical dispensation. The theologian Stagini asserts that the canon, Perenich, procurator of the chapter, had shown a desire to obtain the benefice of St. John, and that he was well acquainted with the apostolic rescript, indeed, that the chapter itself was aware of it. Given these circumstances, it does not seem safe for one's conscience to assert that the chapter concealed the rescript; and consequently, *a fortiori*, it would be said that, after the option has been completed, it is null and void. To prove disobedience or negligence in not complying with the apostolic mandate, "the time of reception of the letters, or of knowledge," must be considered, as noted by Reiffenstuel in *De rescrip.* n. 78, according to chapter 7, *De praebend.* But because the canons, in order to defend themselves further, appeal to the fact that the chapter is under royal patronage; as if, from this, the apostolic rescript granting the benefice of St. John to the canon, the theologian, could not be upheld, it can already be observed that, according to Schmalzgrueber in *De praeb.* n. 44, "it is the case that the Holy Father does not usually anticipate such patrons (laymen, who acquire their right through foundation, endowment, or construction); letters of apostolic provision issued to them would be considered surreptitious, if..."

[*Latin ed. p. 524*]

324 QUESTION. Regarding patronage! Would this special mention detract from it? But in this matter, the situation appears to be entirely different. For, whatever may be the case regarding the right of patronage held by the government, a right whose very existence and value could be greatly doubted, especially considering the present state of relations

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between the government and the Church, and even granting that this right of patronage, exercised in accordance with the option granted by the same government, cannot be exercised except as a last resort from among the remaining options, it can no longer be said that the government has any interest in whether this or that option is chosen, and whether Titus prefers one option out of apostolic zeal, or Caius another out of ordinary practice; for the right of patronage will always be exercised with regard to the one remaining benefice. Therefore, the alleged circumstance of royal patronage does not seem in any way to undermine the favor indicated by the theologian. And indeed, although this circumstance was silent in the previous requests, the rescript nevertheless remains valid, and it cannot reasonably be said to be based on deception or trickery. For, as the Glossa expressly states in chapter 14, part 1, in the words "Falsa," "Be convers. coniugai," and as the Doctors commonly hold, if a deception, whether through silence regarding the truth or through a false expression, occurs concerning only the motivating cause, it does not invalidate the rescript. A fortiori, the silence regarding some circumstance of small or minimal value, with regard to the effect in question, cannot harm anything. Therefore, since the rescript of September 22, 1884, cannot be considered to be based on deception or trickery, it seems superfluous to say anything further about its justice and equity. But, since the Capitulars also raised this point, it was noted that Cardinal Peter, in reference to Const. 2 of Innocent VI, volume 4, number 24, stated, "It would seem unreasonable that a theologian who undertakes a greater burden should have lesser emoluments than other simple canons perpetually." Therefore, in those chapters where the option is presented and the theologian holds a lesser benefice, the Sacred Congregation has frequently and rightly granted that "he may choose the more valuable one once, or even repeatedly, just like other canons" - Lucidi, volume 1, page 380, note.

[*Latin ed. p. 525*]

ÖRTONEN. 525. Examples are found in Meievitana, February 29, 1826; in Regien, the option of June 7, 1775, and July 11 subsequent; in Volterra, the right of option, July 20, 1793; and in Bellunen, April 23, 1864. In this matter, the canon theologian held the thinnest of opinions; therefore, it appears most prudently and coherently to have been entirely granted for the sake of the option; and thus, it would also be supported from this point. And even more strongly, because the option was, in turn, treated by other capitulars, this appears irregular and improper. The theologian Stagioni recounts that the option was made by the capitulars without any solemnity; the canon Perenich, procurator of the chapter, indicated to the treasury the praebenda of Saint Philip and Saint James – and this, although he had been warned and, suddenly, four of the capitulars, while the others were either unwilling or unable to move, had carried out the ascent as if by force. Furthermore,

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the same theologian Stagioni notes: "The option, according to Scarfantonio, is an act of a man, and it must be established that, according to the rule, it must then be done by a canonical act, and the act of option must be made in the chapter itself, lawfully assembled."

THE RIGHTS OF THE CANONS. The patron of these rights addresses his argument, noting that the option made by the canons, whatever may be the question in the abstract, cannot be revoked in reality and in fact. Indeed, if the Government, to which the right of patronage in the chapter belongs, has supposed the lesser praebenda to be vacant after the option, as if it had supposed the greater of Saint John to be vacant, if the option had not been completed within twenty days. Since one of the terms of substitution is lacking, namely the praebenda of Saint John, which, by a legitimate act of the canons and confirmed by the civil Government, is held by the senior canon, it is considered that anxieties and disturbances are needlessly aroused by insisting on the substitution, especially since the Government has never, in the present state of affairs, contradicted itself, nor has it enforced its rights by a pontifical rescript.

[*Latin ed. p. 526*]

325 ORTONA. He then proceeds to defend his argument, asserting that no right belongs to the canon of Ortona to provide for the *s. Ioannis*, whether considered as a theologian or as a dispenser of pontifical grace. To demonstrate this, he first presents excerpts from the constitutions of the chapter of Ortona, from which it is clear that the right of appointment is granted only to the senior canons, in consideration of services rendered, and that this right is denied to all others, except the archdeacon, the canon theologian, and the penitentiary, who have a fixed and permanent provision, and who, as such, are retained by the governing body. To further support this, he cites certain resolutions of the Sacred Congregation of Rites, in addition to the authority of numerous Doctors. He emphasizes that all of this is confirmed in a special way by an oath, in which the canon of Ortona, who has served as a theologian for only four years, promised, in accordance with the chapter constitutions, to retain his theological provision until his death. Then, proceeding to the second point, the defender notes that a rescript was sent on September 22nd to the archiepiscopal administrator, so that, given the circumstances as stated, he might, according to his judgment and conscience, execute it. However, he argues that this is not a precise and absolute grant, because the archbishop could grant or deny the grace according to his will, or according to the circumstances, after having previously presented the verified facts to the Most Holy Prince. But he claims that there is a flaw in the prayers of the canon of Ortona, namely, a deception and a concealment. For he conceals the royal patronage, knowing that if the Supreme Pontiff knew, he would not grant the grace, lest a conflict arise between ecclesiastical and civil power. Furthermore, he states

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a falsehood when he claims that the theological provision is worth only about 30 scudi. For the defender recalls that the theological provision was established by the Bishop of Ortona, Joseph Falconio, from the revenues of the vacant canonry following the death of John Baptist de Fabritiis, and from the simple benefice of the Holy Cross, in the year 1726, at that time...

[*Latin ed. p. 527*]

REASONS. 527. Recently published, the constitution of Benedict XIII, which required 60 scudi as a dowry. From this, it is inferred that a theological endowment was proposed, either greater or certainly equal to that required by said constitution. Furthermore, since the endowment of St. Pantaleon has also been united with the theological endowment, now, besides the 1, 3, and 9 books which represent the income of this latter, the canon theologian enjoys daily distributions from books 6, 0, 0, which not only greatly exceed the sum asserted by Stagioni, but constitute a dowry double that which the Benedictine constitution desires. Moreover, he states that these things, which he has thus far presented, are such that they would certainly impede the execution of the rescript by the Archbishop. To this is added that, if this endowment were removed, the chapter would suffer great damage, considering the small endowment of the chapter itself and the grave service involved, besides which, the sought-after right would seem to be violated, concerning the ancient canons, among whom are some who have served the church for more than forty years. Finally, it is noted that another fact should not be passed over in silence, which perhaps alone resolves the dispute. He states that the rescript of September 22, 1884, was in no way communicated to the chapter, neither before the death of the canon Paulinus, which occurred on January 17th, nor within the 20 days following, within which the option was to be exercised, as is proven by the testimony of the canon from the secret records of the chapter. Therefore, the option was made by the canons with complete ignorance of the rescript. Hence, the Archbishop justly and deservedly issues a favorable vote to the chapter, all the more so because said rescript was not, in due course and at an opportune time, communicated to the chapter, duly assembled. With these considerations, the purpose was to examine whether there is a basis for the execution of the rescript of September 22, 1884, or rather, whether the option completed after the death of canon Paulinus should be confirmed in this case. RESOLUTION. The Sacred Congregation, having considered the matter, on January 23, 1886.

[*Latin ed. p. 528*]

528 ORTONEN. He decided to respond: Negatively to the first part; affirmatively to the second, having consulted with the Most Reverend. FROM WHICH YOU MAY GATHER: I. That ecclesiastical jurisprudence holds that in rescripts concerning graces or benefits, or privileges, the time at

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which the letters were issued or dispatched must be considered; so that it may be determined whether the right sought belongs to the party in whose favor the same letters were issued or dispatched, unless something else prevents it. II. That, by the law of prevention, the Pontiff sometimes orders that a benefit about to become vacant be conferred upon someone; from which it follows that an Apostolic provision must be preferred as prior, and provisions made by those who have the right to confer the benefit must fall, even if they were made by those ignorant of such a pontifical prevention. III. That many teach that the formula added to papal rescripts, which is left to the judgment and conscience of the Bishop, does not carry with it the freedom for the Bishop to execute it. IV. Hence, grace is considered to have been granted out of favor to the petitioner, whenever the necessary executor, ordered to execute the grace, knows the truth of the matter. V. It seems that this jurisprudence encountered an obstacle both in the prayers of the orator, which were not entirely true in every respect, and with regard to the provision of theological reasons, and with regard to the very ancient practice of that Chapter, which did not seek [a certain office], to which the orator was even bound by oath.

NULLIUS AQUAE VIAE INSIGNIA CANONICALIA. On December 12, 1885. Through summary petitions, the Chapter of the royal church of St. Eustachius presented to the Sacred Congregation, Ferdinand IV, King of both Sicilies, the following insignia, which he had granted to the Chapter members by decree on May 9, 1789.

COMPENDIUM FACTI.

[*Latin ed. p. 529*]

"Concerning the twelve senior canons who perform ecclesiastical functions, a large silk cape of amaranth color is worn, along with furs of the marten (*vulgo di martora*), and tails made of white ermine skin, as well as a mantle made of white silk ornamentation, shaped like a rose, placed on the left side of the hip, with two white silk tassels hanging below, and a rochet with its fitted sleeves. In winter; in summer, the same large cape is worn with white silk instead of the furs, and with the same mantle, white silk tassels, and the aforementioned rochet. For those holding offices, the use of a violet-colored tunic (*vulgo sottana*) is customary. For the other, younger canons, an amaranth-colored cassock with marten furs is worn in winter; in summer, the same cassock is worn with white silk. For the simple priests or chaplains, a rochet and a surplice are worn. For all canons, both senior and junior, in the sacred weekday functions, a cassock with a hood, or a mozzetta of amaranth-colored silk, is worn. Outside the choir, for those holding offices and the twelve senior canons, red silk slippers are worn, with tassels of the same color on the cap; for the other canons, silk

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slippers and tassels, but of violet color, are worn."

When, however, Pope Pius IX, in his apostolic letter *Si aliquando*, dated August 16, 1848, in which the status of the Aquaviva church was changed, decreed that the Aquaviva chapter could retain those insignia which were not abrogated by usage and were considered legitimate, the canons believed that the insignia described above could be used. Recently, however, during a visitation to the Holy See, the Sacred Congregation declared that the Aquaviva chapter was not legitimately using such insignia and required correction. Struck by this declaration, the canons humbly request forgiveness and the Ordinary strongly commends these prayers, which are conformable to the truth. Acts, Vol. XVIII, section CCXV, 34.

[*Latin ed. p. 530*]

530. A synoptic discussion regarding the matter of ecclesiastical insignia can favor the canonical observance, since they have been in their possession for almost a hundred years, and therefore it is scarcely possible to decide upon their removal without causing scandal and astonishment among the people. Nor is it foreign to the practice of the Sacred Congregation of Rites that such concessions be granted. Indeed, in Plati, on February 1879, concerning the proposed doubts: Whether the right belongs to communists to carry the banner over the altar in a certain case; and, to the extent that it is negative: Whether, with a prior petition of the communists, there is a place for the granting of said insignia in the case; the Sacred Congregation responded: "Nothing is to be changed, with the approval of the Holy See" (1). However, if the canons in a certain case have used their insignia for almost a hundred years, without anyone objecting, and the Bishop commends the chapter's prayers, it does not seem to be feared that abuses or disputes will arise from the granted concession. But, on the other hand, it seems to be opposed that, as Bouix says concerning chapters, page 4, chapter 12, section 3: "Since that disposition of the law is certain, namely, the authority of the Holy See is required to introduce or change the insignia of chapters, contrary practice not only does not deserve support, but is punishable, as Scarfantonius says, volume I, page 37." Hence, on March 17, 1660, the Holy Roman Congregation responded to the chapter of Aquila: "It is not permitted for the canons to resume the ancient use of pontifical copes, unless it is proven that they formerly used them by an apostolic indult," (reference: Gardellini, number 1898). With these considerations, the question arose as to how the prayers should be addressed. RESOLUTION. The Sacred Congregation, having knowledge of the matter on December 12, 1885, decided to respond: "Nothing is to be changed, with the approval

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of the Holy See" (1). You have this question in Volume XII, page 551.

[*Latin ed. p. 531*]

Lyon, the 27th of February, 1886. Session 25, chapter 9, concerning Reforms. In the year 1546, Philip De-Mattei constructed a church, which was dedicated to the Assumption of the Blessed Virgin; and within the church, he established a benefice or abbey, ordering that the patronage thereof be preserved for himself and his descendants. He also founded a house, adjacent to the church, which would serve for the use of the abbot and other priests serving the church. From this house, he desired that there be two entrances to the temple: one leading from the upper chambers to the portico above the main entrance of the church, and the other opening into the church from the courtyard of the building. However, with the passage of time, and with the failure of the male line of De-Mattei, according to the terms of the foundation, the right of patronage passed to the female line, and thus to the family of Palmieri. But at the beginning of this century, during the time of the French invasion, the benefice, as soon as it became vacant, was subjected to suppression; and the property ceased to be, as was written in the document presented to the Most Holy [See]. The abbatial house, however, remained in the use and dominion of the family of Palmieri, and as such, it was preserved, albeit unjustly. In the year 1835, at the request of the confraternity of Saint Elizabeth, the brothers Palmieri granted to that confraternity the use of the aforementioned church, under these conditions: that the church be maintained for divine worship; that the family of Palmieri and other inhabitants of the house have access to the church, and that the full use of the portico for attending Mass and other sacred functions be preserved. Hardly a year had passed since this concession, when, on the 9th of November, 1836, John Palmieri sold the house adjacent to the church to a certain Michael Pedio, with the aforementioned reservations and privileges. Nevertheless, all of these agreements represent a summary of the facts.

[*Latin ed. p. 532*]

532 LYGIEN. (as everyone understands) had been improperly taken by the brothers Benedict and John Palmieri, namely, in order to enforce the French usurpation; therefore, a little later, in the year 1840, moved by the spur of conscience, they petitioned the Holy See for forgiveness for the past, offering a certain sum as restitution and compensation. And the Most Holy petitioners, after a hearing and considering the circumstances, were mercifully absolved from the censures and ecclesiastical penalties; and – only the right of patronage was restored to them; furthermore, the cession of the church to the sodality of Saint Elizabeth was benignly approved. In the meantime, the Pedio family, in accordance with the contract of purchase and sale of the abbatial house, peacefully used the oratory. It should be

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known, said the Bishop, that the Pedio family, fifteen years ago, had obtained, through a commendation from the capitular vicar, the right to use the oratory, with the obligation to pay dues; however, they never fulfilled this obligation, using one pretext or another – causing small scandals, other inconveniences, and lawsuits. Therefore, after the death of the aforementioned Michael Pedio, his widow was repeatedly warned, as was fitting; but in vain; therefore, the general vicar, in order to break her obstinacy, decreed that, given the state of affairs, it was not possible to fulfill the obligation regarding the oratory for the celebration of the festive Mass. Then, the Bishop, during the Holy Visitation, seeing with his own eyes how improper this was, ordered that the oratory not be closed off with grates, but that grates be added to the oratory within a month. But in vain: the family, after a month, requested a postponement, which they also obtained, but under the condition that the church would be closed unless the family complied; but nevertheless, they did not comply with the orders. Therefore, in order that ecclesiastical prescriptions should not be further disregarded, the Bishop closed the church, and the altars were stripped by the chaplain of the confraternity of Saint Elizabeth, and the doors were closed, with the confraternity complying, albeit with pious sorrow, even that door which opened from the atrium of the Pedio house into the churchyard. But the widow Pedio, indignant at this, brought the confraternity before the secular court, as if they had violated her rights: the cause.

[*Latin ed. p. 533*]

LYCIEN. 533, nevertheless, fell at the first instance; therefore, the pious confraternity closed the gate with stone, which led into the *odeum*; and then the Bishop reconciled the church. But the woman, challenging the decision, obtained a civil victory in the matter of possession concerning the gate of the *odeum*. Then the Bishop again interdicted the church. And during these events, the pious confraternity of St. Elizabeth, which, having been brought to judgment, had defended itself on the grounds of ecclesiastical law, was exhausted and burdened with debts. Meanwhile, the family of Pedio, being wealthy, having lost goods from the confraternity, as testified by the Ordinary, had purchased them for themselves. When, however, the victorious party in the civil court opened the gate of the *odeum*, and the Bishop again interdicted the church, then Horontius and the sisters of Pedio appealed to the Sacred Congregation. They recounted more about their rights concerning the church and the *odeum*. The Bishop, being questioned about the matter, briefly explained the entire affair; then, at the request of Horontius and the sisters of Pedio, a decree was issued: "Let them exercise their right before the episcopal court." And thus, the case was brought before the court of Lecce, with Horontius Pedio as the plaintiff, who claimed rights of patronage over the church and free use of the *odeum*, and the pious confraternity of St. Elizabeth was again con-

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vened. On February 18, 1884, the episcopal court issued this judgment: "Lord Horontius does not enjoy any right of patronage in the Church of St. Elizabeth; the confraternity of St. Elizabeth was never a plaintiff; and therefore, no damages of any kind can be awarded to it; Lord Pedio and his family are not entitled to reclaim any object that was given to them as a gift; and therefore, in all the expenses of the trial, we condemn Lord Pedio." Horontius appealed from this judgment to the Sacred Congregation. Synopsis of the Dispute. HORONTIUS' DEFENSE. His advocate sought only to vindicate the right to the *odeum*, using the rules of both possessory and ordinary legal proceedings. And with regard to possession, he defended his client with all his strength, arguing that in this case, both the legal and the factual possession favored him.

[*Latin ed. p. 534*]

534. LYCIEN. He states that the right in question consists of the uninterrupted right of access to the church and the oratory, for the purpose of attending sacred functions; and that this is clearly established by a public document, by which, on December 7, 1836, Michael Pedio was granted possession of these rights. He declares that this right of possession has never been disturbed, but has always been peaceful, up to the present time; and in support of this argument, he cites the words of the Vicar General. Furthermore, he states that the actual possession, which the Pedio family acquired, after a solemn contract entered into with John Palmieri, the owner of the house and patron of the church; and that the Pedio family has always remained in this possession with a just title and in good faith. With these premises established, he argues that it is manifest to all that possession, according to the principle stated in *Be restii*, section 6, establishes a presumption of ownership, and causes the condition of usucaption (acquisition of property through long possession); and that it grants to the possessor in good faith the right to enjoy the fruits derived from the use of another's property; and therefore, that the Pedio family legitimately possesses the right of access to the church and the use of the oratory. He maintains that all of this is confirmed by the fact that the case in question concerns a long period of possession, that is, from the year 1836 to the present. Indeed, he shows that a long period of possession requires proof, as Cardinal De Luca states in *Discourses*, section 5, on *Preeminence*, number 2: "Even in those cases in which, due to legal impediments, regular possession is not admitted, even if it is not justified by a title, it is nevertheless effective and requires proof, when it is for a very considerable period of time." And in *Discourses*, section 49, on *Jurisdiction and Competence*, number 16: "In matters of possession, inquiry is not made into the justice or injustice of the title or of the principal transaction, but attention is given to the bare fact of possession, in which the possessor must be protected... especially when the possession is for a considerable period of time, which,

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in such cases, is protected even in matters subject to legal impediments, and the exception of good title is never considered." He endeavored to demonstrate the same thing from the remedies available to the possessor. He cites the interdicts of Roman law, as if he were saying: "Let them be used as possessors, and..."

[*Latin ed. p. 535*]

LYCIEN. 535. For the purpose of maintaining possession, he argued that the Pedio family should be restored to their rights, because he maintained that they had, up to the present time, possessed the right to access the church and to use the oratory, through a solemn contract, and without any defect, that is to say, without violence, clandestinity, or precariousness. Furthermore, he invoked another interdict, derived from the laws of the Romans, for the recovery of possession from which someone has been forcibly ejected; and, in virtue of this interdict, he maintained that the Pedio family, having been violently disturbed in their long and peaceful possession, should be restored to their former rights. To these provisions of Roman law, canonical laws are added, which establish other remedies for the recovery of possession, called "remedies by law or canon," such as the action *condictio ex cap. Saepe contingit 18 de rest. spoliat.*; and therefore, the general rule is that the one who has been despoiled must be restored first, so that the one who has despoiled should not be heard before the restoration has been made, as stated in chapter 1 on despoliation. However, the advocate, turning to arguments derived from the laws of litigation, affirmed that it could not be doubted that the brothers Benedict and John Palmieri had granted to the sodality of St. Elizabeth the use of the church of St. Mary Assumed into Heaven, with the express condition, both regarding access to the church, and regarding the use of the oratory.

(1) These interdicts are used by those who are arguing about the true or civil possession of things. *Posses-* as in *possessio*. Civil possession is the detention of a thing with the intention of holding that same thing as one's own. Other interdicts are for retaining possession, others for recovering possession lost, such as those for purchase, donation, inheritance, etc. When some are litigating about possession, the Praetor did not allow the litigation of possession to be prolonged, but rather, he briefly formulated two things: 1. that the possessor should be known; 2. and briefly, that the possessor should be restored. Thus, Salvian said: "Both are true." Therefore, three things are required: 1. to know who is the possessor; 2. to restore the possessor. The interdicts are: 1. *interdictum de vi*, which is granted to the one from whom possession has been violently taken, in order to restore the possession; 2. *interdictum utrubi*, which is granted to both parties litigating about possession; 3. *interdictum salviandi*, which is granted to the one who is in danger of losing possession. What is required so that someone should be obligated to possess, until the litigation against

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the one rejecting the possession has been completed? Hence, the interdicts are extraordinary actions for the recovery of possession.

[*Latin ed. p. 536*]

536. LYCIEN. Having laid these matters before him, he said: ''It is well known that agreements are to be held in high regard, and that pacts must be observed completely; as is stated in chapter 1 of Antigonus concerning agreements, and in Law 1 of this edict concerning private agreements. 'For what is more fitting for human faith, than to observe those things which have been agreed upon between them?' Especially when the agreement was initiated through public instruments, which are said to confer a valid right both in the claim and in possession, as the Rota has decided in case 562, number 11, before Molines. Therefore, according to him, the association cannot withdraw from this agreement, since it is no longer an integral part of it, namely, an agreement religiously observed over a long period of time; in such a case, the law itself states that the parties cannot withdraw from the agreements, because it is uncivil to refuse to do what was previously agreed upon, and because no one is permitted to change their mind to the detriment of another, and because no one can prejudice a right acquired through the initial agreement. These rules concerning acquired rights are accepted by all, and the Supreme Pontiff, although he may be able to, should not be presumed to have intended to take away this acquired right, unless he expressly and formally declares this, as is stated in Pastoral Decree 19 concerning private matters, in Regulation of the Chancery 18 concerning not taking away acquired rights, in Fagnanus concerning this chapter, and in De Rubeis, decision 217, page 9, volume 1, collection. Furthermore, it is evident, the advocate continued, from the very nature of the initial pact, or agreement. The advocate maintained that the agreements made in the concession of the use of the church, granted in favor of the religious association of Saint Elizabeth, namely, allowing the inhabitants of the house access to the church through an internal door, and the use of the altar, were entirely permissible, because they do not prejudice the exercise of sacred functions or divine worship. He also noted that this is not a matter of establishing a servitude in favor of the Pedio family against the freedom of the church, but only of a participation in an honorary right, belonging to the patron of the church, and granted by the patron to those who use this right in his place and on his behalf. And this same right belongs to patrons...

[*Latin ed. p. 537*]

LYCIENSIS. He maintained that he had reserved 537 rights for himself, and had legitimately transferred others through the sale of property. For, he argued, if the right of patronage passes to heirs through hereditary succession; and if a lay patron, even without the consent of the Bishop, can

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validly donate the right of patronage, as testified by Schmalzgrueber, page 4, title 38, number 146; and if the right of patronage is transferred through the sale of property, the lease of land to which it is attached, or through an emphyteusis or enfeoffment, as stated in chapters 7 and 13 concerning the law of patronage; then, a fortiori, the patron can cede his honorary rights; for he who can do more can certainly do less. He also observed that there were many houses adjacent to churches in the city, adorned with chapels, and yet such a question had never arisen. Furthermore, he cited the explicit Apostolic decree, in which "on June 21, 1841, Our Holy Father added the following... to the Bishop of Lyciensis... the cession of the abbey church to the sodality was benignly approved, so that divine worship may be exercised therein"; and since no mention is made of any agreements made in the instrument of concession, it is rightly understood that the Holy See did not intend to abrogate them. He stated that all of this is confirmed by the principle that observance is the best interpreter of the law and of agreements, and that it declares the state of affairs and whatever has been agreed upon between the parties. To support this, he cited the Rota in Barcelona, January 10, 1721, which stated: "Indeed, subsequent observance best declares what has been agreed upon between the parties." And before Molines in the Cathedral of Piacenza, June 22, 1703, it was stated: "One must refer to historical documents concerning the extent of the matter, and more safely, to observance, and according to it, establish the manner and reason by which the said transfer was truly carried out." He noted that the force of long-standing observance is so great that even forty years of observance can change the very status of benefices, as stated by Cardinal De Luca, Book 12, paragraph 1, on benefices, section 27, article 18. Finally, the patron observed that the ecclesiastical court does not...

[*Latin ed. p. 538*]

538. LYCIUS. Contested the family Pedio's aforementioned rights, but merely prescribed that a grating be installed in the oculus, to which mandate his client readily confessed to being prepared to comply. DEFENSE OF THE BISHOP. However, it must be considered that an oculus is usually a personal privilege, and therefore, as such, is granted only for the lifetime of certain individuals who have benefited the Church, as can be gathered from the proceedings in Reatina before the Sacred Congregation of the Council on May 26, 1732, and in Forlì on July 24, 1824. Nevertheless, it is confessed by all that such privileges, of retaining windows in churches, or doors that lead from private houses to those same churches, are nothing other than servitudes, which are contrary to the honor and reverence due to them; Pignatelli, volume 4, consultation 129, number 1, and following. The sacred canons, however, prohibit the imposition of servitudes on churches, as stated in the decree of Spoleto on June 24, 1784, § Servitudes. Therefore, Clement V, in Clement, I, De sent. ececom. in VI regularibus,

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commanded that no windows be opened in his churches, through which secular individuals might hear the divine services. Similarly, Pius V, in the year 1566, decreed that all windows in the city be closed, which offered a view into churches from secular houses. And in the aforementioned Spoleto and Pignatelli, number 4, the decree of the Sacred Congregation of the Holy Office and the Religious is cited, as follows: "It is not permitted to private individuals to have and retain windows overlooking churches adjacent to their dwellings." And the Sacred Congregation of the Council consistently affirmed this same principle, as demonstrated by the decree of Rome concerning oculus, on June 29, 1853. Furthermore, it is noteworthy what Pignatelli also cites, namely: "So that not even Dukes, Marquises, or others may be permitted to do so, as the same Sacred Congregation (regarding Bishops) declared on March 5, 1619, with these words: Neither Dukes nor Marquises are permitted to open windows into churches to hear Mass and divine services." And concerning doors, and this even if there were a long custom and patrons, as in Faventina, on February 15, 1619, namely: "The doors must be closed with a wall."

[*Latin ed. p. 539*]

LYCCE. Since those through whom access to the Church is gained are accustomed to using the adjoining houses, although they have been accustomed to doing so for a long time. These things being so, it is not to be considered without reason, nor to be granted without a serious cause, that the Pedio family should possess the right of patronage and the privilege of the oratory, and the entrance. However, among the arguments, the right of patronage cannot be put into effect, from which Horontius Pedio presumptuously sought to derive the privilege of the oratory. Indeed, it seems sufficiently demonstrated that the patronage pertains to the Church of the Assumption, not to the Pedio family, not only 1. from the judgment of Lycce, but also 2. from the Pontifical rescript of June 21, 1841, granted to Benedict Palmieri, 3. from the fact that the confraternity, which belongs to the Palmieri family, annually pays certain dues as a sign of obedience, and finally 4. from the very renunciation that Horontius and his defender made concerning this matter, during a hearing before the Most Holy Congregation. Therefore, with the right of patronage dismissed, only two things remain to prove their claim, namely 1. the contract of purchase of the abbatial house, which Michael Pedio made with the Palmieri brothers in 1836, in which a clause concerning the cession of the right of the oratory is found; or 2. the apostolic privilege, of which the Ordinary speaks, which was formerly obtained by the same Pedio family. However, perhaps it is of little benefit to allege the former title, since the Palmieri brothers themselves only held the use of the oratory abusively. Indeed, after the French invasion, those occupying the abbatial house also gained access to the church, either through the ground floor entrance or through the upper gate leading to the

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oratory; but the Church of the Assumption remained closed at that time, and was only reopened to the faithful with the arrival of the confraternity of Saint Elizabeth; and in granting this confraternity the use of the church, the aforementioned facilities of access to the church through the internal entrance, and the use of the oratory, were granted.

[*Latin ed. p. 540*]

LYCIAN MOUNTAINS. The family Palmieri wished to retain possession of the property, as they themselves confessed in the very document by which they sold the abbatial house to Pedio. But just as the possession of the house, which was abbatial, was abusive, so too was the use of the *odium* and the interior [section] of the church, which had formerly been reserved only for the abbot and the clergy of the church; therefore, it could not be alienated or granted to others by any agreement. Do not say that in the decree of absolution, dated June 21, 1841, since the alienation of the house was considered valid, so too was the use of the *odium* and its transmission approved; for nothing of the kind is found, either in words or in phrases, either in prayers or in the text of the decree. Do not assume that the right of the *odium* is implicitly included in the right of patronage, and therefore that the family Palmieri, as patrons, could certainly possess and transmit it. For, firstly, and in general, it is highly doubtful whether the right of patronage eminently and implicitly includes the privilege of the *odium*; because, although the patron has the honor of a stall in his church, as shown by canon 26 in *Piae mentis*, cause 16, question 7, and by the title ”Nobis” 25 on patronage; nevertheless, this honor seems to be a different thing from the *odium*. For while the rights of patronage and its consequences are considered as something ordinary in the law, and are acquired by the law itself under certain conditions; the *odium* holds the character of a privilege, and is obtained only by an apostolic dispensation.

(1) (1) Regarding the frequently cited *Tulli consul* 129, volume, the following points are also relevant, even if it is a question of an honorary or due right: Pigna, *Quae qui* 4, on the lord of the place, because the right to have windows in the church is not considered an honorary right, but a servitude of the church, as is prescribed in the test of the Bishop of *Diana*, who has a seat in the church, receiving sustenance in cases of need, and in poverty, and in other similar circumstances, as stated by Vivian, *De iur. patron.*, L. 1, chapter 2, paragraphs 12 and following. Therefore, in the case of having windows in the church, it is not a right of patronage, as in similar cases, regarding the right to have seats, chapter 17, paragraph cited, and 7; Fuscus and the honorary right in the church, as stated by Rocchus, *patr. in ecclesia*, paragraphs 18, 30, and *Diana v.*, with the exception that it does not concern imposing a servitude on the church, as stated by Mestai, ”sup.” but also regarding salutations, Ugolinus, *De po- quiri aut praerogativis in

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ecclesia circa locum et praeeminentiis et §. De iur.*, Gratianus, ibid.

[*Latin ed. p. 541*]

LYCIEN. 541 But these things are in general. Since it can be further observed in the present case that the Palmieri family held the patronage of the family estate before the abbatial house took possession of it, and yet they did not then enjoy the fruits of it, since it belonged to the abbot; but that after the house was usurped, that is, after this unjust act, indeed through it, that right of the Palmieri family ceased and increased, this is quite unthinkable. Therefore, as a superfluous matter, let us raise the question, whether the brothers Palmieri, insofar as they held the aforementioned right to the fruits for themselves and for the inhabitants of their house, could have transferred that same right to others through the sale of the house; and on this point, much more could be said. And this has led us to another matter to investigate, namely, the apostolic privilege: and Michael Pedio testifies that this was requested and obtained from the Ordinary. And this grace was obtained under the condition that they would apply the fruits. Moreover, although it may seem that the Pedio family has obtained everything, it is not so. For 1. it can be asked why this family, which has left no stone unturned, and has even experienced injustice, has never, even in the present case before the Sacred Congregation, made any mention of the apostolic rescript. But this was not unknown to Horontium Pedio; therefore, it is not unreasonable to suspect that the accuser, Horontium, believes that the aforementioned rescript provides little help to his case. Furthermore, since we are dealing with the matter of privileges, the commonly accepted doctrine can be invoked, that he who alleges a privilege must prove it. "Privileges are not considered unless it is shown that they are true." Benedict XIV, vol. 2, constitutions, Causes. And in De Privilegiis, 32, it is said, "Privileges must be examined to ensure that their terms are observed." Concordat, c. Against the custom, dist. 100, where these words are read: "Either the custom of all must be observed, or if something has been specially granted to your church by you, it must be shown." Cf. Ferraris, v. Privilege, art. 2, n. 29; Reiffenstuel, ad tit. De Privilegis, n. 26 seqq.

[*Latin ed. p. 542*]

542 LYCIEN. But those things which appear to touch the present point of the question are the words of the Bishop: for it is said that the right of patronage was obtained, with the Vicarius capitulari alleging that the right of patronage pertaining to the Pedio family extended to the neighboring church of the Assumption: and the Vicarius asserted this in order to please the aforementioned family, perhaps thinking, since at that time the question had not yet been brought before the court, that the patronage truly belonged to Michael Pedio in that church. But this was entirely false. Therefore, the rescript obtained through a false narrative, suffers from the

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defect of fraud, and therefore, it would seem, has no effect whatsoever, according to the well-known canon 20 *Super litteris* of title *De rescript.* Nor should one object by saying that fraud only invalidates the motivating cause and that, if committed without deceit, the rescript can still be upheld, as stated in the same chapter, *Super litteris*. Rather, it should be said that fraud has occurred in the motivating cause; for if the Most Holy See knew that the Pedio family did not possess any right of patronage, and had abusively purchased the abbatial house in the past, it would probably not have granted the favor. But, in addition to all that has been said so far, even if we were to admit that the right of patronage legitimately obtained by the Pedio family was indeed granted, still, a strong argument can be raised against their claim. For it is well known that privileges are lost and annulled through abuse, as expressly stated in canon 7, *dist.* 74: "For the privilege of dignity deserves to be lost by him who abuses the power granted to him." Also, in canon 63 of the same *caus.*, question 34: "A privilege entirely deserves to be lost by him who abuses the power granted to him." And also in chapter *Ut privilegia*, of the same title: "Because a privilege deserves to be lost by him who abuses the power granted to him." And with almost the same words, in canon *Tuarum*, of the same title. When it happens that someone abuses a privilege, it is explained with Zoesius in title *De privileg.*, number 38, and by Reiffenstuel in the same title, number 177, namely, 1. when someone uses a privilege beyond...

[*Latin ed. p. 543*]

LYCIEN. 543. Hoc ius, si excedat terminos, locum, tempus, vel materiam et personam non concessos, non est validum, sicut docet cano. Ubi ista dist. 74: 2. "Quando quis, ex causa privilegii, accipit occasionem peccandi." Exemplum datur in cap. Contingit. De sent. excom. ubi clerici, privilegio clericali ad illicitas res utentes, et post ter admonitionem se non corrigentes, privilegium clericale perdunt." Reiffenstuel, I. c. n. 178. Quibus aliis praenotatis, propositum fuit diluendum dubium: An sententia Curiae episcopalis sit confirmanda vel infirmanda in casu. RESOLUTIO. Sacra O. O. re cognita sub die 27 Februarii 1886, censuit respondere: Sententiam esse confirmandam. Ex QUIBUS COLLIGES. I. Cum ius habendi fenestras in Ecclesiis, non potest dici ius honorificum, sed potius habendum est ceu servitus Ecclesiae; ideo ius eiusmodi acquiri nequit in loco sacro sine legitimo titulo. Apostolicum tantum indultum legitimum praebere titulum ad hanc Ecclesiae imponendam servitutem; quia sacrae Congregationes romanae et doctores saepe saepius innuunt non licere privatis personis habere ac retinere fenestras prospicientes in Ecclesiis, habitationi contiguis. II. Et, quamvis patroni per longam consuetudinem iure utebantur, tamen ius non acquirunt et abusive servitutem Ecclesiae imponunt, quia ius hoc speciali indulto conceditur personae ab Apostolica Sede, neque comprehenditur inter iura honorifica concessa patronis. III. In themate, cum sup-

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positum ius patronatus deficeret in actore, pontificium indultum quoad usum utebantur corrueret; et insuper actor ex abusu privilegium amitteret, etiamsi vere datum fuisset, absente obreptione et subreptione. IV. Nam privilegium meretur amittere qui permissa sibi abutitur potestate; quando nempe ex hoc privilegio occasio gignitur ad peccandum et ad scandala facienda.

[*Latin ed. p. 544*]

APRUTLAN FACULTY, February 20, 1886. By summary petition.

COMPENDIUM OF THE MATTER. In the village of Pezzani, in the diocese of Aprutina, the parish of Saint Lawrence consists of seven hundred and more souls, dedicated to agriculture; the majority of whom live in the fields and on the other side of a certain stream. Today, only the parish priest is present; therefore, only one Mass is celebrated, to which the parishioners, especially those who live on the other side of the stream, cannot gather at the same hour on feast days. In the past, this deficiency was remedied by a chaplain who celebrated Mass in a public oratory, belonging to a private family, on the other side of the stream. However, due to the diminished number of priests, owing to the calamitous necessities of the times, that benefice also ceased. Therefore, the faithful requested the Bishop to obtain an apostolic indult, by which the parish priest might offer two Masses on feast days, one in the parish church and the other in the aforementioned oratory on the other side of the stream, with some compensation promised for the inconvenience suffered by the parish priest. And this emolument, which was formerly granted to the aforementioned chaplain, would be transferred to increase the proper stipend of the parish priest, which is not substantial, namely, 239 *libellae*. Therefore, the Bishop humbly petitioned the Sacred Congregation, asking whether the Benedictine Constitution, *Declarasti nobis*, of March 16, 1746, could be applied in this case.

SYNOPTIC DISCUSSION: IT SEEMS THAT THE MASS CAN BE REPEATED. Indeed, ancient monuments indicate that in the early times of the Church, up to the tenth century, priests were accustomed to celebrate the divine mysteries more than once on the same day. But, according to the current discipline, to offer the sacrifice of the Holy Mass twice on the same day...

[*Latin ed. p. 545*]

APRUTINA, 545, when a true and serious necessity arises; Lucidi, *Particula*, 1, column 1, on the subject of Visitations, page 438, states: "It is not permissible to indiscriminately grant this faculty to Bishops, but only for a true reason of necessity in a particular case. Hence, it is customary for the Ordinary to turn to the Holy See, so that a safer and more certain judgment may be obtained." The celebrated disposition on this matter is found in chapter 3, title XLI of the Decretals: "You have consulted us as to whether

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a priest can celebrate two Masses" on the same day. To which we have considered it" necessary to respond that, except on the feast of the Nativity of the Lord, "unless a cause of necessity dictates, it is sufficient for the priest to celebrate only one Mass" in the day. What kind of necessity this should be is apparent from the words of Lucidi in the aforementioned passage. Where he states: "This occurs when one parish priest is in charge of two parishes, or governs two populations that are very separate, or when the parishioners cannot all gather together at the same time to hear Mass, and otherwise no other priest can be found." Furthermore, Benedict XIV, in the constitution *Declarasti*, §, states: "Although it is so stated, it is nevertheless unanimously transmitted to the priest who holds two parishes, or two populations so separated that one of them cannot, on feast days, be present with the celebrating priest due to the extreme distance: then, theologians believe that it is permissible for such a rector, when feast days occur, to perform the sacred rite twice and to provide for both populations." In light of these legal precedents, the Orator's prayers seem to favor the Benedictine Constitution. And in truth, the parishioners of St. Lawrence are sufficiently separated from each other, so that they cannot gather together to hear a single Mass, and consequently, they can be considered as two separate populations. Furthermore, the same Benedict XIV, in the aforementioned Constitution, cites the decision of the Council of Neman, in the year 1284, which seems entirely relevant to our matter. Indeed, the words are: "If all the parishioners cannot gather together on feast days to hear Mass because they live in different places, distant from each other," Volume XVIII, section CCXV, 35.

[*Latin ed. p. 546*]

546. "To those who are far from the church, as in the mountains, and where there are not two priests, and the first Mass has been celebrated, if the parishioners who come later request another Mass to be said, the priest may celebrate another Mass." And this is most just, so that the faithful, who derive the greatest benefits from the offering of the unbloody sacrifice, may not be deprived. IT SEEMS THAT THE MASS CANNOT BE REPEATED. However, it should be noted that, in order for this repetition of the sacrifice to be permitted, mere utility or any necessity, however great, is not sufficient; but a very serious necessity is required. Therefore, it is not surprising that this faculty has been denied on several occasions, as happened in Apeteñ on May 8, 1734, in Nicien on November 27, 1790, etc. Indeed, in our case, there does not seem to be such a serious necessity; for the parish priest has the opportunity to celebrate at a time that is most convenient for everyone. Furthermore, it is certainly not known what the distance is between the village and its neighboring town across the stream, because the Bishop has not indicated how many miles the colonists are from the church. And this pertains specifically to the repetition of the Mass.

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Regarding, however, the offering that is made for the repetition, it has been noted that the Most Holy Office, in *Cameracen. Missae pro populo* on September 25, 1858, in Ventimilien on December 19, 1835, and in others, has prohibited any alms from being received by the priest for the offering of a second Mass; indeed, even a deplorable custom, contrary to this, has been observed, as in Brixien, in a report among the petitions of March 3, 1855, which states: "The custom, according to what has been explained, is to be condemned and is to be reserved [under the authority of] Benedict XIV 'Cum semper oblatas'." But in the matter of alms, it does not seem to pertain to the celebration or offering of a second Mass, but rather to a remuneration for the parish priest's labor and inconvenience, which at certain times of the year can be quite significant. Therefore, it has also been asked whether the Eminent Judges should decide whether the prohibition, mentioned above, applies in this case. In Treviren, the acts of the *Eleemosynae missarum* of March 23, 1861, were summarized.

[*Latin ed. p. 547*]

APRUTINA §47 Concerning prayers, it was inquired: "1. Whether a parish priest who, in order to fulfill the intentions of the founders, celebrates two Masses on Sundays and feast days, and offers Masses for the founders of chapels, can receive a salary from the chapel fund for his particular labor? 2. Whether a parish priest who, due to circumstances, celebrates two Masses on Sundays and feast days, either in the parish church or in a chapel located elsewhere, and simultaneously imparts Christian doctrine, can receive an annual salary offered by the parishioners for his particular labor and industry?" The Sacred Congregation responded: "It is permissible to allow some remuneration, at the prudent discretion of the Bishop, considering the labor and inconvenience involved, excluding any alms offered for the application of the Mass." The Sacred Congregation of Rites also responded in the same manner in a document concerning a monastery, on June 11, 1845. With the above noted, the question arose as to what should be answered concerning these prayers. RESOLUTION. The Sacred Congregation, having considered the matter, on February 20, 1886, decided to respond: "At the discretion and conscience of the Bishop, for a period of five years." FROM VARIOUS DOCUMENTS. I. Parish priests may repeat the Mass when they administer two parishes or have two populations so separated that neither can, in any way, attend the Mass celebrated by the other due to the distance. II. A parish priest may repeat the Mass as if he had two populations, and may receive some compensation for the labor and inconvenience involved in celebrating a second Mass in a church located apart from the parish church. MONTIS REGALIS REGARDING THE OBLIGATION OF MASSES AND ABSOLUTION. On January 23, 1886. Through summary prayers. In the year 1504, a benefice was established in the town of St. Albani-Stura, under the title of Saints

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Peter and Paul, with the obligation of three Masses per week; which was suppressed during the invasion of the French. SUMMARY OF THE FACTS.

[*Latin ed. p. 548*]

The citizens of MONTIS REGALIS, perhaps unaware of such a suppression, appointed a rector in the year 1839; to whom a canonical institution was granted by ecclesiastical authority. In the year 1864, the aforementioned [institution] was subjected to suppression according to Italian law. Consequently, the benefice became public property in two parts, the other third being assigned to the community of s. Albani, as its patron. Nevertheless, the community of Albani, besides its third part, had requested, and obtained, that all of fundi sufficient to fulfill the obligations of the masses formerly attached to the benefice be given to them. However, the Bishop stated, it is not known whether the aforementioned obligations were ever fulfilled by the Municipality. Among the private individuals who acquired property from this benefice was a certain notary, Stephanus Perotti; whose daughter and heir, Laurentia, upon his death, realizing that nothing was established regarding the fulfillment of those things prescribed to purchasers of ecclesiastical property, petitioned the Holy See, offering a sum of 500 livres for the purpose of obtaining both absolution for the past and freedom from any burden that might be incumbent upon her.

A SYNOPTIC DISCUSSION: PRAYERS TO BE CONSIDERED. It was indeed primarily observed that a doubt could arise as to whether, through the absolution granted by Pius VII concerning French usurpations, the obligations were so extinguished that, should a benefice be restored by chance, as has happened here, the obligations would no longer revive. However, given the re-establishment of the benefices of ss. Petri et Pauli, it must be considered whether the fulfillment of those obligations pertains entirely to the municipality of s. Albani, after it has obtained the necessary fundi and promised to be subject to the obligations. If, however, the acceptance of that obligation by the community is not valid, since it does not proceed from a competent ecclesiastical authority, then it must be considered that it is not fulfilled in such a manner.

[*Latin ed. p. 549*]

At Monreale, concerning the burden of the masses, it is always a heavy matter for those who hold the benefice; nevertheless, it must be said that not even a third part of the obligation pertains to Laurentia Perotti, as can be seen from a comparison of the holdings; for the holdings that have come to the woman are less than a third, says the Prelate. To this, we must add that Laurentia offers the sum of 500 *librae* for the granting of this dispensation, and therefore, the request for a reduction in the number of masses clearly

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seems to be reduced to a small number, and therefore is much more easily granted. Add to these the reasons that Laurentia herself presents in the suppliant petition, namely: 1. The most miserable condition in which agriculture is currently found, and therefore an evident diminution of income. 2. The good faith of the father, who perhaps acquired the holdings without considering the obligation attached to them. 3. The presumption of the fulfillment of the obligation, perhaps made by the father, although this is not presently proven. For the father was a man of sufficient piety and honesty. 4. Ignorance, even on the part of the woman, up to the present time. 5. Finally, the increase in the synodal tax, which is almost double that of the time of the foundation of the benefice. All of these reasons seem to suffice not only for granting a dispensation in the future, but also for rectifying the entire past, especially considering the good faith of the woman. PRAYERS SEEM TO BE JUSTIFIABLE. ON THE OTHER HAND, the laws of both jurisdictions seem to oppose the granting of the petition, which require that the last will of testators be fully observed – L. I. C. de SS. Eccl. C Vol. 13, qu. 2; C. Trid. Sess. 22, C. 6 De Reform.; S. C. C. in Romana Commut. Volunt. 14 Iun. 1806, and elsewhere repeatedly. This is all the more important, because here it is a matter of reducing the burden of the masses. The Sacred Congregation teaches that such burdens are to be observed more scrupulously, as testified by Benedict XIV, De Syn. Dioc. I. 13, c. ult., n. 23: so much so that other burdens should rather be commuted. With these considerations, the question arose, what should be answered to the petition. RESOLUTION. After reviewing the matter, the Sacred Congregation decided on January 23, 1886, to respond: After the deposit of the money by the petitioner...

[*Latin ed. p. 550*]

§50 In Monreale, three times before the Curia, for the sake of absolution "with regard to the past," and liberation "with regard to the future," the following was decreed, along with the Most Reverend PARMEN, regarding a change of will, on February 27, 1886. By means of a summary prayer, Anna Mazza passed away in the year 1864, establishing her heir, her nephew Henry Ross, and commanding him to ensure that one Mass be celebrated daily and perpetually in the parish church of Saint Secundus, with a stipend of one and a half livres for the celebrant, and to give the parish priest 50 livres annually as compensation for the expenses incurred in celebrating the Mass. Furthermore, she willed that three other Masses be celebrated on the days of Saint Anthony Abbot, the Blessed Virgin of the Seven Sorrows, and Saint Andrew of Avellino, with a fixed alms of five livres for each. Therefore, for the fulfillment of the entire bequest, 612.50 livres would have to be spent annually, or a revenue of 12,250 livres, at a rate of five for each hundred. Finally, the testatrix stipulated that, in order to ensure that the burdens imposed by the will were properly fulfilled, one of her properties, called Capezzato, be subject to a mortgage, which was

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indeed done. However, from the very beginning, the will of the testatrix suffered an injury. Indeed, at the request of the heir, due to serious expenses incurred by him in the inheritance, the execution of the bequest was initially suspended; then, it was ordered that 450 livres be paid to the parish priest; and shortly thereafter, another, albeit always temporary, reduction; for the heir petitioned and obtained that, for a time, only 100, and then only 24, annual Masses be celebrated. Under these circumstances, on July 18, 1884, Henry Ross, the heir, died, leaving all his possessions, which were almost entirely composed of his mother's inheritance, to his heirs, as stated in the SUMMARY OF FACTS.

[*Latin ed. p. 551*]

PARMEN. 851, lawfully called, namely the widow of Arturo and Aegisto Rossi, and also another widow, Rosa Rossi, and her five children who are still minors. These individuals are compelled by necessity to divide the inherited property, but, as they report, they are hindered by a mortgage that is found on the property in Capezzato. Therefore, they first request that the mortgage be lifted; and then that the offer of 2500 livres, which they propose, be accepted, so that they may be released from all further obligations of the bequest. The Ordinary has testified to the truth of these matters. A SYNOPTIC DISCUSSION REGARDING THE POSSIBILITY OF GRANTING A DISPENSATION. Furthermore, it is universally acknowledged that the Holy Father can alter the last wills of the faithful for pious causes. Just as this power belongs to the Supreme Prince with regard to secular bequests, as evidenced by *Argumentum I. legatum ff. De Adm. rerum ad civ. pert., I. verbis legis ff. de V. S.* and *I. legatum ff. de usufructu*, so too does it belong to the Holy Father with regard to pious bequests. For the goods of the deceased, which are left for a certain pious cause according to their last will, pass into the patrimony of the Church, of which the Supreme Pontiff is the supreme administrator. "As Lugo states in *De iust. et iure disp. 24, no. 312*, the supreme power that the Prince has over the goods of his subjects is such that, for a just reason, he can, with regard to the goods of the deceased, do that which he judges necessary or useful for the proper governance of the Church." To this, St. Thomas Aquinas precedes in *2-2 q. 100 a. 1*, stating: "Although the things of the Church are his [the Pope's], as the principal administrator, nevertheless they are not his as a lord and owner." This doctrine clearly flows from both Clement's *Quia contingit 2 De Relig. Dom.* and the Council of Trent, sessions 22, chapter 6, and 25, chapter 4, concerning reforms. And although a more serious reason is required to alter pious bequests than in the case of secular bequests, nevertheless, any just and reasonable cause is sufficient to alter them, as

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Pirhing states in *De test. p. 132*, namely, "not only for public..."

[*Latin ed. p. 552*]

552. Furthermore, private necessities may have compelled [the testator]. Schmalz, *De testamento*, no. 213. The causes commonly adduced, especially Schmalz, I, no. 220, 221; Ferraris, *ad verbum Legatum*, no. 157 *et seqq.*, are these: 1. Impossibility; for no one can be obligated to do that which is impossible – c. 6 *De Rerum Iurisdictione*, in 6. – 2. Great difficulty: for that which is very difficult is considered, morally, impossible; and we say that something can be done only if we can conveniently do it. c. Statuimus 13 *De Officiis Legis*, in 6. – 3. Necessity or evident utility which is comparable to necessity. – 4. If it is suggested by piety, e.g., to provide for the poor. Indeed, it seems certain that in the matter of a legacy, impossibility or at least great difficulty may be present, and that a reason of piety may arise for its abrogation. Certainly, according to the Bishop's attestation, if the entire estate of Anne Mazza were free and unencumbered, it would not exceed 48,450 *libellae*. However, such an amount would not suffice for the support of two widows and five minor children, in addition to a portion assigned to two others, Arturo and Aegisto, for their inheritance. But the pious testatrix's estate was not entirely free; a portion of it, calculated at 10,000 *libellae*, was reserved for certain simple legacies; another portion, of approximately 12,000 *libellae*, was assigned for a legacy for the benefit of the Mass, concerning which the question arises. Thus, half of the sum would have to be deducted; and from the remaining portion, enough would have to be provided to support as many people as have been listed, which would undoubtedly result in great hardship. To these considerations must be added the cause of piety, for the Church, a pious mother, has always striven to assist the needy widows and orphans, and to provide for them, even by drawing upon the treasures of the temples. But, on the other hand, other obstacles seem no less significant. Indeed, it is provided by law that the will and disposition of the testator must be observed and held valid in all things (I. *verbis ff. de Voluntate S.*, Novel. 22, c. 2). If a heavier burden seems to have been imposed, it must be remembered that everyone, as master of their own affairs, can impose any burden they wish. This is all the more true when *QUA SUADENT GRATIAE NEGATIONEM* (that which suggests the denial of grace).

[*Latin ed. p. 553*]

P. ARMEN. 553 seems to be the matter in question; for Henry of Ross was not Anne's necessary, but voluntary, heir, and it is not certain that Anne was obligated to Henry from another source. Furthermore, it would be a great detriment to the Church if, for the 12,250 livres, only 2,500 were received. Nor should it be passed over in silence that the legacy, as the Bishop points out, has been recognized and upheld by civil law; there-

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fore, there is no reason to fear losing it entirely; indeed, civil approval will be necessary to redeem it. With these things noted, the question is what should be answered in response to the prayers. RESOLUTION. The Sacred Congregation of Councils, after discussing the matter on February 27, 1886, decided to respond: As it is explained, it does not seem expedient. From WHICH IT IS UNDERSTOOD. I. That the Roman Pontiff can, for a just cause, concerning the goods of the deceased, judge whatever is necessary or useful for the proper governance of the Church. II. Since in this matter a just cause was not seen by the Fathers, therefore the requested grace was denied by the response – as it is explained, it does not seem expedient. & PISTORIEN. RENUNCIATION AND REMOVAL FROM THE PARISH. On March 27, 1886. Through summary petitions. SUMMARY OF THE CASE. The pastor of the church of St. Donnin, who is now 63 years old, appealed to the Holy See with a suppliant letter, stating that he had withdrawn from the parish because, due to the harshness and distance of the places, he could no longer serve them; indeed, his renunciation was already in the hands of the Ordinary, but under the condition that, as a provision for his sustenance, 700 livres per year should be assigned to him for life.

[*Latin ed. p. 554*]

554. The petitions of the same Church amount to 1343, "laden with burdens." The Ordinary, earnestly commending the petitions, states: "It concerns a parish priest, whose actions are entirely detrimental to the flock of the faithful; who would now be content with a pension of 300 livres; and if he receives this, he will immediately send a messenger to his parish."

Synopsis of the Discussion. Indeed, it seems that resignation can be admitted in this case, according to what is established in O. Nisi cum pridem 10 de Ren., Constitution *Quanta Ecclesiae* of Pius V, C. Trid. ad c. 6, session 21 concerning reforms, and in many decrees of the Sacred Congregation, as in Meliten, October 15, 1644; Alerien, July 10, 1757; and Chamberien, July 26, 1880, where the scandal to the people, physical or moral inability to serve, and the incorrigibility of the beneficiary are considered sufficient grounds for resignation; but also ought to be. For if, when the utility and necessity of the Church demand it, even an innocent parish priest must undoubtedly be removed, because he would then be removed without fault, but not without cause, a fortiori, a parish priest who is positively unworthy should be removed, lest the scandalous life of the pastor corrupt the morals of the faithful. *Can. Miramur*, Dist. 61, I, 2, C. de Dignit., and Reg. 87 Juris. It is better, and with less scandal, that he be removed through his own resignation, than through a public process; which, moreover, according to what the Bishop states, would neither be possible in this case, nor would it be appropriate. Furthermore, Pius V did not wish anyone to renounce a benefice "unless he has another means of support, by which he can live comfortably," *Constitution Quanta Ecclesiae*; "because it does not befit

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those who are dedicated to the divine ministry to beg or to engage in some sordid pursuit," C. Trid. sess. 21, c. 2, De ref. Therefore, it is the case that the Sacred Congregation, or Council, or Bishop, whenever they have accepted resignations or imposed removals, have always, with a true and valid reason, considered PRAYERS TO BE RECEIVED.

[*Latin ed. p. 555*]

PISTORIEN. They decreed that a certain pension should be established; Resolutions of August 12, 1805, September 4, 1869, May 24, 1873, and January 20, 1883, based on Decrees and Resolutions of April 27, 1866, and May 27, 1877, from the Sacred Congregations, and the Regulation. It does not seem to be hindered by canon 13 of session 24 of the Council of Trent, concerning the exemption of parochial churches from charges on pensions, which do not exceed the sum of 100 guilders, according to their true annual value; because, in the present case, this sum of 100 guilders would be preserved for the future pastor, as stated in the specific circumstances. PRAYERS SEEM TO BE REJECTED. Nevertheless, it could be objected against the aforementioned that, although a legitimate reason certainly seems to be present for admitting the renunciation, it may nevertheless be lacking in the grace of the pension. Indeed, the following rubric of the Decretals is an obstacle: "That ecclesiastical benefices be conferred without diminution." Furthermore, it is known that Constitution XIII, which begins with the words "Quanta Pastoribus" (1724), intended that, as far as possible, pensions should not be imposed on parochial benefices, so that the pastors might more easily provide for the needs of the faithful. Moreover, if the removal were to occur due to the faults of the pastor, these principles could be invoked against him: "No one's fault should be detrimental to the Church," Reg. I. 76, in VI. "For the author of a fault is bound by it, not by another's," L. Sancimus 22 C. de poen. And rightly so, because no one should derive advantage from his own injustice. With these considerations in mind, the question arose as to what should be answered to the prayers. RESOLUTION. After careful consideration, the Sacred Congregation decided on March 27, 1886, to respond: "For the present, until otherwise provided, let the matter be discussed with the Most Holy."

[*Latin ed. p. 556*]

§56 FROM THE VATICAN, LETTERS. From Ludovici Iacobini, Secretary of State, to D. De Monts, concerning affairs of Borussia, the Legate at the Holy See. April 4, 1886. In the last communication, dated the 26th of last month, the undersigned Cardinal Secretary of State informed His Excellency, the Extraordinary Envoy and Plenipotentiary Minister of Prussia, that immediately after the current bill, with the aforementioned modifications, is accepted and promulgated, the bishops will undertake to no-

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tify the Prussian government of the names of those ecclesiastics who will be appointed, as parish priests, to exercise the ministry in the parishes currently vacant. It was added that, if, as is to be hoped, religious peace is achieved, the possibility of extending such notifications in the future will easily arise. This method of proceeding originates from the consideration that, although the new bill, with its final modifications, undoubtedly represents an improvement in the condition of affairs (and indeed, with regard to their nature), the importance of which is gladly acknowledged; nevertheless, it cannot be said that religious peace is fully and completely established, as long as other provisions of the previous legislation remain in force.

April 4, 1886. In the aforementioned public communication, given from the office, the undersigned Cardinal, Secretary of State, informed the Most Excellent Orator of *russiae*, the Extraordinary Delegate with full powers, that the bishops will, immediately after the new law, which is to be enacted, is accepted with the noted modifications, undertake to ensure that the names of those ecclesiastical men are known to the administrators of the Prussian state, who will be appointed as parish priests to exercise the sacred ministry in the parishes currently vacant. Furthermore, it was added that, if, as it is permissible to hope, religious peace is obtained, the possibility of having such notifications will easily be permanent. This method of proceeding originates from the fact that it has become very clear to the Holy See that, although the new law, which is to be enacted, together with the final modifications, undoubtedly represents a better condition of affairs (and indeed, with regard to their nature), the importance of which is gladly acknowledged; nevertheless, it cannot be said that religious peace is fully and completely established, until other provisions of the previous laws...

[*Latin ed. p. 557*]

There are laws currently in force, of which no mention is made in the draft of this new law. Therefore, it is considered that the authorization for the publication of notices for currently vacant parishes constitutes an important step, and that, with gradual progress, the way may be prepared for complete religious peace. And therefore, this same authorization for publication is placed at a level that would correspond with that state of complete order which the Holy See would greatly desire to see realized as soon as possible. Indeed, Catholics would not be pleased to see the Holy See grant this permanent authorization before they have been given the opportunity to enjoy definitive religious peace. Furthermore, reliance is placed on considerations that derive from the nature of the matter itself, and which are expressed in previous documents of the Holy See. Nevertheless, it has been learned from various sources, and especially from the latest public statements of His Excellency, the Prince of Bismarck, that the current draft of the law, with its latest modifications, would be very difficult

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for the majority of the Parliament to adopt, unless the Holy See consents to authorize, even now, the permanent publication of notices. The Holy Father, aware of the gravity of this distressing situation, would suggest to the highest administrators of the state, in order to alleviate difficulties on both sides, that the draft of the new law, which has recently been proposed, should...

[*Latin ed. p. 558*]

LETTERS 1>58, Prussian, in order to diminish difficulties from both sides, and to completely fulfill the present project, the aforementioned stipulations concerning the parts, of which no mention is made in that project, are recalled for examination; so that it may be certainly confided that the restoration of religious peace will, indeed, be absolutely achieved.

The acceptance of this proposal will fully satisfy the wishes of the Most Holy Father; and therefore, sincere joy will be experienced by Catholics, so that the Holy See may already now grant the aforementioned stable institution, which it desires to concede.

If, however, in the present circumstances, the complete and immediate revision of the laws of May cannot be carried out in the manner indicated, as soon as the undersigned Cardinal Secretary of State has officially received the assurance that, in the near future, steps will be taken to carry out this revision, the Holy See will immediately grant the permanent notification in the sense contained in the response of March 26th to the third question posed by the Prussian legation in its Note of the same day.

If, however, a complete and expeditious revision, instituted in the manner suggested, cannot be carried out, and the undersigned Cardinal, entrusted with the affairs of the Pontifical States, has received a public guarantee signed by proper authority, then, in a sufficiently short time, steps will be taken to carry out this revision, and the Holy See will immediately grant the desired faculty of permanent notification, in the very sense that is to be understood in the response given on March 26th to the third question posed by the legates of Prussia in their public letters of the same day.

As for this third question, the intention of the Holy See is to allow the highest authorities of the Republic the freedom to use their right, namely, to present to those who hold supreme authority in each diocese the reasons that advise against excluding the proposed person, as soon as they believe their appointment to the position to be incompatible.

[*Latin ed. p. 559*]

LETTERS concerning public order, due to a fact known to the government and proven by it to be serious. The Prussian government will recognize in these latest proposals a new proof of the unceasing concern of the Holy Father to achieve religious peace, as well as his efforts to remove obstacles in the examination of means that could lead to said peace. The

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undersigned Cardinal Secretary of State has the honor to assure Your Lordship of the sentiments of his highest consideration. CARDINAL IACOBINI.

559. And if, indeed, his addition to the Parish, for the proper governance thereof, is considered detrimental to public order, because of some offense known to those who govern the Republic, and as having been proven to be grave, in Aversa. The Prussian Empire will recognize in these proposals a new testimony of the concern with which the Most Holy Father is constantly devoted to achieving religious peace, and of his efforts to remove obstacles, while seeking means and supports, which could contribute to obtaining the same peace. The undersigned Cardinal, Secretary of State, has the honor to assure Your Lordship of the sentiments of his highest esteem, and to confirm them again and again. CARDINAL I. A. COBINIUS.

LETTERS. From Cardinal Jacobini, to the Most Illustrious Schlözer, Envoy of Prussia, dated April 25, 1886.

The undersigned Cardinal Secretary of State, having brought to the knowledge of His Holiness the "Note of the 23rd of the month," sent by the Prussian government in response to the latest Note of the Holy See, takes the liberty of informing Your Excellency of the following:

First of all, the Holy Father has learned with true satisfaction that the proposal of the Holy See, to proceed with a further revision of the provisions of laws, not contemplated in the current draft, has been considered by the Prussian government as a sign of mutual peace.

[*Latin ed. p. 560*]

§60 Regarding the conciliation, aiming to complete the religious pacification. Therefore, the assurance given to the Holy See that it would proceed with the aforementioned revision, and would propose a new bill to the Chambers in this regard, could not fail to be pleasing to His Holiness. Furthermore, the success achieved in the Chamber of Lords regarding the new bill, with its related amendments, was also a source of great satisfaction to the august mind of the Supreme Pontiff. And therefore, the Holy Father, in order to demonstrate his high appreciation of the aforementioned matters, and also in order to offer a new and singular testimony to the Prussian government of his trust and deference, has authorized the undersigned Cardinal Secretary of State to inform the aforementioned government that it is his intention that the notification concerning the currently vacant parishes should begin immediately and be carried out without delay. Your Excellency, in presenting this communication to your government, you will not fail to note its special value, particularly in relation to the attainment of lasting religious peace.

Signed, Card. L. IACOBINI.

[*Latin ed. p. 561*]

561 FROM THE CONSISTORY ACTS, on the fifth day of June, in the

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year 1886. A public Consistory was held in the Royal Hall at the Vatican, in which His Holiness our Lord presented the red biretta to the Reverend Fathers Joseph Sebastian Neto, created and declared in the secret Consistory of March 24, 1884; to Antolino Monescillo and Viso, and to Celestino Ganglbauer, created and declared in the secret Consistory of November 10, 1884; and also to Augustine Theodoli and Camillo Mazzella, who had been created and declared only recently. And there, Philip, Knight Gioazzini, the consistorial advocate, for the third time, was diligently urging, with the utmost insistence, that His Holiness would deign to confirm the decree concerning the cause of beatification of the venerable Handmaid of God, Geltrudis Salandri. To this plea and insistence, the Most Reverend and Right Reverend Lord Augustine Caprara, the Promoter of the Faith, responded with the customary protestation, to which His Holiness deigned to reply, "to our Sacred Congregation of Rites, so that it may examine and report." After the public Consistory, a secret Consistory was held in the upper buildings of the Vatican Palace, in which His Holiness our Lord, with the aforementioned Reverend Fathers, Cardinals present, and with the door closed, as is customary, so that they might not express their own opinion in Congregations, Consistories, or other cardinal functions, proposed the following Churches: (5) THE METROPOLITAN CHURCH OF PORT-AU-PRINCE, in the Haitian territory of America, is vacant, due to the death of the Most Reverend Alexius Mary John Guilleux, the last Archbishop of that see, outside the Roman Curia, with the favor of the Most Reverend Father Constant Maturini Hilion, Bishop of Cap-Haïtien, for the presentation of the illustrious and honorable Haitian, the President of the Government. Acts, Volume XVIII, page 226, number 36.

[*Latin ed. p. 562*]

562 FROM THE CONSISTORY ACTS OF AQUEN. To which the archiepiscopal titles of Arles and Embrun are perpetually united, is vacant, due to the death of the Most Reverend Theodore Augustine Forcade, the last archpriest of that church, who died outside the Roman court, by the favor of the Reverend Father Francis Xavier Gouthe-Soulard, a priest of the archdiocese of Lyons, at the nomination of the most illustrious Man, Jules Grevy, President of the French Republic. The Reverend Father Francis Xavier Gouthe-Soulard, born of legitimate, Catholic, and honorable parents in the town commonly called St. Jean la-Vetre, of the archdiocese of Lyons, and having reached his sixty-seventh year, formerly held the office of General Vicar of the archdiocese of Lyons, but for many years has been the parish priest of St. Peter of Vaise in the archdiocese of Lyons, to which office he has now relinquished.

THE CATHEDRAL CHURCH OF ELNE is vacant, due to the death of the Most Reverend John Augustine Emily Caraguel, the last bishop of that church, who died outside the Roman court, by the favor of the Reverend

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Father Natalis Matthew Victor Mary Goussail, Bishop of Oran, at the nomination of the most illustrious Man, Jules Grevy, President of the French Republic.

THE CATHEDRAL CHURCH OF FOROIULIE is vacant, due to the death of the Most Reverend Joseph Sebastian Ferdinand Terris, the last bishop of that church, who died outside the Roman court, by the favor of the Reverend Father Frederick Henry Oury, Bishop of Guadalupe, or Basse-Terre, at the nomination of the most illustrious Man, Jules Grevy, President of the French Republic.

THE CATHEDRAL CHURCH OF DIVIONEN is vacant, due to the death of the Most Reverend John Peter Bernard Castillon, the last bishop of that church, who died outside the Roman court, by the favor of the Reverend Father Victor Lucian Sulpicius Lécot, a priest of the diocese of Soissons, at the nomination of the most illustrious Man, Jules Grevy, President of the French Republic. The Reverend Father Victor Lucian Sulpicius Lécot, born of legitimate, Catholic, and honorable parents in the town commonly called Montescourt-Lizorolles, of the diocese of Soissons, and having surpassed his fifty-fifth year, has hitherto been the parish priest of St. Anthony in the city of Compiègne, of the diocese of Beauvais.

THE CATHEDRAL CHURCH OF ORAN is vacant, due to the translation of the Reverend Father Louis Natalis Matthew Victor Mary Goussail to the Cathedral See of Elne, by the favor of the Reverend Father Gerald Soubrier, a priest of the diocese of St. Flor, at the nomination of the most illustrious Man, Jules Grevy, President of the French Republic. The Reverend Father Gerald Soubrier, born of legitimate, Catholic, and honorable parents in the town commonly called Badaillac, of the diocese of St. Flor, and having reached his sixtieth year.

[*Latin ed. p. 563*]

EX ACTIS CONSISTORIALIBUS 563, having surpassed his sixtieth year, the Metropolitan Canon and Parish Priest of Algiers has hitherto resigned. The CATHEDRAL CHURCH OF LINARES, in the jurisdiction of Mexico in North America, remains vacant, due to the translation of the Reverend Father Joseph Mary Ignatius Montes de Oca and Obregon to the See of San Aloysius of Potosí; for the Reverend Father Blasius Enciso of the Order of Regular Canons of Saint Augustine, attached to him, passed away in the secret Consistory on November 13, 1884, the day before he would have received his Apostolic Letters of promotion, or would have undertaken the office of consecration, or would have entered into possession of that Church; with the favor of the Reverend Hyacinth Lopez, a priest of the archdiocese of Guadalajara. He was born of legitimate, Catholic, and honest parents in the place called from the Incarnation, in the archdiocese of Guadalajara, and, having surpassed his fiftieth year, he was ordained to the priesthood and received the degree of Bachelor in the theological faculty,

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and he has been endowed with the dignity of Metropolitan Canon until the present time. The CATHEDRAL CHURCH OF TABASQUEN, in the jurisdiction of Mexico in North America, is vacant, due to the translation to Tulane of the Reverend Father Augustine Torres, recently deceased, with the favor of the Reverend Father Joseph Perfect Amesquita, a priest of the Congregation of Missionaries of Saint Vincent de Paul, of the archdiocese of Guadalajara. He was born of legitimate, Catholic, and honest parents in the city called Fernandez, in the archdiocese of Guadalajara, and, having surpassed his fifty-first year, he was chosen by the house of the same Congregation in the city of Superior, to attend to the confessions of the faithful, to preach the word of God, and to carry out missions for the clergy and the people. The METROPOLITAN CHURCH OF BURGEN is vacant, due to the death of the Most Reverend Saturnino Fernandez de Castro, the last Archbishop to die outside the Roman Curia, with the favor of the Reverend Father Emmanuel Gomez, Salazar, Bishop of Malaca, for presentation to the Most Serene Queen of the Catholics, Regent. The METROPOLITAN CHURCH OF COMPOSTELLAN is vacant, due to the translation to the See of Toledo of the Most Reverend and Illustrious Lord Michael, with the title of Saints Quiricus and Julitta, of the Holy Roman Church, Cardinal Paya and Rico, with the favor of the Reverend Father Victoriam Guisasola and Fernandez Antistitis Oriolensis, for presentation to the Most Serene Queen of the Catholics, Regent. The CATHEDRAL CHURCH OF CAURIEN is vacant, due to the translation to...

[*Latin ed. p. 564*]

564 FROM THE CONSISTORY ACTS: The See of Malaca was presented by the Most Reverend Fathers Marcellus Spinola and Maestre, with the favor of the Reverend Fathers Aloysius Philip Ortiz and Gutiérrez, priests of the diocese of Santander, to the Most Serene Queen Catholica, Regent. The Reverend Aloysius Philip Ortiz and Gutiérrez, born of legitimate, Catholic, and honorable parents in the place called Castillo, in the diocese of Santander, and having reached the fifty-first year of his age, having previously been awarded the doctorate in theology, and having served as Dean of the Chapter of the diocese of LeÃ³n, has now resigned from his position as Dean of the metropolitan Church of Valladolid.

The CATHEDRAL CHURCH of Matriten is vacant, due to the death of the Most Reverend Narcissus Martinez Yzquierdo, the last Bishop, who died outside the Roman Curia, and is presented by the Reverend Fathers Cyriacus Mary Sancha and Hervas, Bishops of Ã□vila, to the Most Serene Queen Catholica, Regent.

The CATHEDRAL CHURCH of Malaca is vacant, due to the translation of the Most Reverend Emmanuel Gomez-Salazar to the Metropolitan See of Burgos, with the favor of the Most Reverend Fathers Marcellus Spinola and Maestre, Bishops of Coria, to the Most Serene Queen Catholica, Regent.

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The CATHEDRAL CHURCH of Majorica, to which, by Apostolic Brief dated the ninth of September, 1851, the Church of Ibiza is united, is vacant, due to the death of the Most Reverend Matthew Jaume and Garau, the last Bishop, who died outside the Roman Curia, and is presented by the Reverend Fathers Hyacinth Mary Cervera and Cervera, Bishops of the suppressed Church of Saint Christopher of Laguna, or Novara, to the Most Serene Queen Catholica, Regent.

The CATHEDRAL CHURCH of Asturica is vacant, due to the death of the Most Reverend Marian Brezmes and Arredondo, the last Bishop, who died outside the Roman Curia, and is presented by the Reverend Fathers John Baptist Grau and Vallespinas, priests of the archdiocese of Tarragona, to the Most Serene Queen Catholica, Regent.

The Reverend John Baptist Grau and Vallespinas, born of legitimate, Catholic, and honorable parents in the city called Reus, in the archdiocese of Tarragona, and having reached the fifty-fourth year of his age, having previously been awarded the doctorate in philosophy, literature, law, and sacred theology, having been appointed as a Synodal Examiner among several dioceses, and having served as a Canon of Tarragona, as a Church Governor, Provisor, and Vicar in spiritual matters, has now resigned.

[*Latin ed. p. 565*]

FROM THE CONSISTORY ACTS 565: The Cathedral Church of Pampilona, to which, by Apostolic letters dated the ninth of September 1851, the Church of Tudela has been joined as a vicariate, is now vacant, having been relinquished freely by the Reverend Father Joseph Oliver and Hurtado, and having been completed in the hands of HIS HOLINESS, and having been accepted with the favor of the Reverend Anthony Ruiz-Cabal and Rodriguez, priests of the archdiocese of Hispalensis, for presentation to the Most Serene Queen Catholica, Regent. The Reverend Anthony Ruiz-Cabal and Rodriguez, born of legitimate, Catholic, and honorable parents in the place commonly called Villamartin, in the archdiocese of Hispalensis, and having reached the age of more than fifty years, having attained the degree of license in both laws, and having previously been awarded the doctorate in sacred theology, diligently performed ecclesiastical functions, having been chosen as a judge and examiner for parishes, a pro-Synodal official, and having previously renounced his position as a canon doctor in the metropolitan church of Hispalensis.

The Cathedral Church of Legion, now vacant, was previously held by the Reverend Father Saturnino Fernandez de Castro, who recently passed away, and has been transferred to the Metropolitan See of Burgos; for the Reverend Francis Xavier Caminero and Muñoz was appointed prefect of the same Church in the Consistory of March 27, 1885, and he saw the day before he obtained possession of that Church, with the favor of the Reverend Francis Gomez Salazar, priest of the archdiocese of Burgos, for pre-

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sentation to the Most Serene Queen Catholica, Regent. The Reverend Francis Gomez Salazar, born of legitimate, Catholic, and honorable parents in the place commonly called Arija, in the archdiocese of Burgos, and having reached the age of fifty-nine years, having attained the degree of license in canon law, and having previously been awarded the doctorate in sacred theology, formerly held a professorship in the central university of Matriti, and in the faculties of Hebrew and Greek, and having performed the duties of the canon law predecessor, the holder of the vicariate, and the ecclesiastical judge of that diocese, he was also admitted among the members of the Royal Academy for Moral Sciences.

The Cathedral Church of Oriola is now vacant, having been transferred to the Metropolitan See of Compostelana by the Reverend Father Victor Guisasola and Fernandez, with the favor of the Reverend John Maura and Gelabert, priests of the Bishopric of Maiorica, for presentation to the Most Serene Queen Catholica, Regent. The Reverend John Maura and Gelabert, born of legitimate, Catholic, and honorable parents in Palma, where the residence of the Bishopric of Maiorica, and having reached the age of forty.

[*Latin ed. p. 566*]

566 FROM CONSISTORY ACTS: Having surpassed the fifth year of his age, he received the doctorate in sacred theology, and shortly before, the license in canon law, and, having acted as a Vicar in Capite at Beniamar, he was appointed as the Predecessor of the Majorcan faculty of theology, as a Canon Lecturer of that Chapter, and, with that See vacant, he had previously renounced the position of Capitular Vicar. THE CATHEDRAL CHURCH OF DONATO is vacant, due to the death of the Most Reverend Joseph Emmanuel Palacios and Lopez, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Joseph Maria de Cos and Macho, a priest of the Santander diocese, for presentation to the Most Serene Queen Regent of the Catholic Realm. The Reverend Joseph Maria de Cos and Macho, born of legitimate, Catholic, and honorable parents in the place commonly called "Ter au y Selones" in the diocese of Santander, and having reached the forty-eighth year of his age, having previously received the doctorate in sacred theology, was chosen by the Chamber and ecclesiastical government, after consultation, by the Secretaries and the Synodal Examiner, for the magistral canonry in the Oviedo Cathedral. He was subsequently transferred to the position of Prefect of the School in that Cathedral, and most recently, was named Archdeacon of Cordoba. THE CATHEDRAL CHURCH OF GUNTIN is vacant, due to the death of the Most Reverend William Emmanuel de 'Ketteler, the last Bishop of that See, who died outside the Roman Curia, with the favor of the Reverend Paul Leopold Haffner, a priest of the Rottemburg diocese. The Reverend Paul Leopold Haffner, born of legitimate, Catholic, and honorable parents in the city of Horb, in the Rottemburg diocese, and having

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surpassed the fifty-seventh year of his age, having obtained the doctorate in philosophy, was chosen as a Professor of apologetics and philosophy in the Moguntin seminary, and has, until now, renounced the canonry in that Cathedral. THE EPISCOPAL CHURCH HOLDING THE TITLE OF DOREN, in Palestine, with the perpetual and canonical Priory of the four Military Orders of St. James, Alcantara, Calatrava, and Montesia, erected and established in the city of Clunia, or Ciudad Real, is vacant, due to the translation of the Reverend Father Anthony Cascaiares and Azara to the united Sees of Calaguritan and Calceatensem, with the favor of the Reverend Joseph Ranees and Villanueva, a priest of the Gaditano diocese, for nomination, by virtue of an apostolic Indult, of the Most Serene Queen Regent of the Catholic Realm. The Reverend Joseph Ranees and Villanueva, born of legitimate, Catholic, and honorable parents in the city of Gaditano, and having reached the forty-

[*Latin ed. p. 567*]

FROM THE CONSISTORY ACTS, 567. Having surpassed the fourth year of his age, he, a Canon of the Cathedral of his homeland, has renounced his office until the present time. Furthermore, His Holiness has, through briefs, provided for the following churches, as follows:

THE METROPOLITAN CHURCHES OF MÜNCHEN and POSNÁN, which are perpetually and canonically united, are vacant, due to the resignation of the Most Reverend and Right Reverend Lord Miecislaus, holding the title of Saint Mary in the Heavenly Jerusalem, Cardinal Priest of the Most Holy Roman Church, who willingly and freely relinquished his office into the hands of His Holiness, and was accepted by the same, with the favor of the Reverend Julius Joseph Dinder, a priest of the diocese of Warmią. He, born of legitimate, Catholic, and honorable parents in the place of Roossel in the diocese of "Warmią," and having surpassed the fifty-sixth year of his age, was the Prefect of the Königsberg church, and provided spiritual care to the soldiers of the Royal army; he was also the Dean *foraneus* of Sambia and a Canon of Warmią, to whom he has now renounced his offices.

THE CATHEDRAL OF SAVANNAH is vacant, due to the translation of the Reverend Father William Gross, of the Congregation of the Most Holy Redeemer, to the Oregonian See, and has been assigned to the Reverend Father Thomas Andreas Becker, translated from the Wilmington See.

THE CATHEDRAL OF WARMIĄ is vacant, due to the translation of the Reverend Father Philipp Krementz to the Metropolitan See of Cologne; with the favor of the Reverend Andreas Thiel, a priest of the diocese of Warmią, he was elected Bishop by the Chapter and Canons of Warmią, by virtue of an Apostolic Indult, and, according to the decree of the Sacred Congregation of the Consistory, was approved by His Holiness. He, born of legitimate, Catholic, and honorable parents in the town of Lohau in the

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diocese of Warmią, and having reached the sixtieth year of his age, having previously been awarded a doctorate in sacred theology, was a commissary and spiritual vicar general, and until the present time, a Canon numerarius of Warmią, to whom he has now renounced his offices.

THE CATHEDRAL CHURCHES OF DUNEN and CONNOREN are vacant, due to the death of the Blessed Father Patricius Dorrien, and have been assigned to the Reverend Father Patricius Maria Alister; THE CATHEDRAL OF KILMORE is vacant, due to the death of the Blessed Father Nicolaus Conatus, and has been assigned to the Reverend Father Bernardus Finegan.

THE DECATHEDRAL OF DELIMERI is vacant... and has been assigned to the Reverend Father Eduardus O'Deuser.

THE CATHEDRAL OF SEDEM SINUS VIRIDIS is vacant, due to the death of the Blessed Father Franciscus Xaverius Krautbauer, and has been assigned to the Reverend Father Fridericus Katzer.

[*Latin ed. p. 568*]

568 FROM THE CONSISTORY ACTS, it is known that, through a transfer to the Metropolitan See of Saint Faith in Bogotá, the Reverend Father Joseph Telesphore Paul of the Society of Jesus, presented the Reverend Joseph Alexander Peralta, Parish Priest of Saint Andrew in the diocese of Nueva Pamplona. THE CATHEDRAL CHURCH OF NILOPOLITAN, under the Archbishop of Darniat, is vacant, due to the death of the Most Reverend Joseph Szabó, the last of those bishops, who died outside the Roman curia, and with the favor of the Reverend Father Francis of Souza Prado de Lacerda, a priest of the Patriarchate of Lisbon, he was appointed by Apostolic Letters with the Fisherman's ring, through the benevolence of the Most Holy See. He was also appointed as the representative for the presentation of the sermon to the Most Excellent King of Portugal, and as a coadjutor with future succession to the Most Reverend Father John Mary Pereira Botelho do Amaral Pimentel, Bishop of Angra, who, expressing his consent for this purpose due to his advanced age and infirm health, required assistance to perform the pontifical and other pastoral duties in Angra, in the city, and in its diocese, for the benefit and fruitfulness of the Lord, according to the decree of the Sacred Congregation of the Consistory approved by the aforementioned Most Holy See. The Reverend Father Francis of Souza Prado de Lacerda, born of legitimate, Catholic, and honorable parents in the place commonly called dos Prazeres d'Aliubbarrota in the Patriarchate of Lisbon, and having surpassed his fifty-ninth year, has resigned as Parish Priest of the Church of Saint Blaise in the town of Chamusca, within the boundaries of the Patriarchate, and as Vicar Foraneus. THE CATHEDRAL CHURCH OF GERREN, under the Patriarch of Alexandria, is vacant, due to the transfer of the Reverend Father Fidelis Abbati to the Cathedral See of Chios, with the favor of the Reverend Father Henry Charles Camillus

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Lambrecht, a priest of the diocese of Ghent: who was also appointed as a coadjutor with future succession to the Most Reverend Father Henry Francis Bracq, Bishop of Ghent. The Reverend Father Henry Charles Camillus Lambrecht, born of legitimate, Catholic, and honorable parents in Ghent, and having surpassed his thirty-eighth year, recently received the doctorate in sacred theology, was appointed as a professor of dogmatic theology in the Seminary of Ghent, and as Director and Sub-regent of the theological college of Leuven, and has become a Canon of the Cathedral of Ghent, for honor, and as Treasurer of its fabric. THE CATHEDRAL CHURCH OF TRAPOLITAN is vacant, due to the transfer of the Reverend Father Thomas Cámara Castro to the See of Salamanca, to the CATHEDRAL OF PANAMÁ.

[*Latin ed. p. 569*]

FROM THE CONSISTORY ACTS, 569: The Reverend Peter Power, who had been appointed as Coadjutor to the Most Reverend John Power, Bishop of Waterford and Lismore, was presented. The titular church of Mirinensis is vacant, and the Reverend Joseph Andreae Boy was appointed as Coadjutor, with succession, to the Most Reverend Constant Dubail, as Apostolic Vicar of Manchuria. The titular church of Sergiopolitan is vacant, and the Reverend John Booney was presented as Coadjutor, with succession, to the Most Reverend John Leonard, as Apostolic Vicar of the western district of the Promotory of Buena Esperanza. The titular church of Sareptana, under the Archbishop of Tyre, is vacant, and the Reverend Paul Pálasthy, a priest of the diocese of Kaschau, was presented; he was also appointed as an Auxiliary Bishop to His Eminence and Most Reverend John, Cardinal Simor, Archbishop of Gran, for pontifical and other pastoral duties within that city, and for the benefit and fruitfulness of his extensive archdiocese, according to his consent and will. The Reverend Paul Pálasthy, born of legitimate, Catholic, and noble parents in the town commonly called Nagy-Issóp in the diocese of Kaschau, having surpassed his sixty-first year, having recently received a doctorate in theology, and acting as Professor of Moral Theology and as Spiritual Director at the seminary in Kaschau, having been chosen by the Faculty of Moral Theology in Budapest, and having hitherto renounced his position as Canon of the Chapter of Gran. The titular church of Menphiten, under the Archbishop of Damiata, is vacant, due to the death of the late Bishop Francis Suarez, the last of that diocese to die outside the Roman Curia, and the Reverend John Kniaz de Kolzielsko Puzyna, a priest of the archdiocese of Lviv, was presented; he was also appointed as an Auxiliary Bishop to the Most Reverend Severin Morawski, Archbishop of Lviv, of the Latin rite, for pontifical and other pastoral duties within that city, and for the benefit and fruitfulness of his extensive archdiocese, according to his consent and will. The Reverend John Kniaz de Kolzielsko Puzyna, born of legitimate, Catholic, and honorable parents in the town commonly called Gwoscliec in the archdiocese of Lviv, having reached the

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age of forty-four.

[*Latin ed. p. 570*]

S70 Having been honored with a laurel, who was once a collaborator in the parish of Przeworsk, and who served as Rector of the seminary of Premisliensis, as an examiner for the Synod, as a judge in matrimonial cases, and as Rector of the Sodalitas of Priests under the patronage of the Good Shepherd, and who had previously held the office of Assessor and Referendary of the Consistory of the Latin Rite of Premisliensis, and who had previously renounced his position as a Canon of that Church, the titular church of CALAMENSIS became vacant due to the death of the Reverend Father Alosii Mariae Fortini. The Bishop, the Reverend Ludovicus Pineau, of the Society of Foreign Missions of Lutetiae, Paris, who had previously been appointed as the Apostolic Vicar of Tonchini meridionalis, was appointed. The titular church of DORYLENSIS had been assigned to the Reverend Anthony Carrie of the Congregation of the Spiritus Sancti, who was elected as the Apostolic Vicar of Congi G-allici, and who was most recently established in Africa. The titular church of PRIENENSIS became vacant due to the death of the Reverend Father Eli gii Cosi, and the Reverend Anthony Cangran, of the Oblates of Mariae, who was appointed as the Apostolic Vicar of the newly established free state of Arausionis, was also most recently established.

Then, the Most Holy Father, as is customary, addressed the aforementioned Most Eminent and Reverend Cardinals, so that they might express their sentiments in the Consistories, Congregations, and other Cardinalatial functions, in whatever places, and he bestowed and assigned to each a precious ring as a gift, for their Title or Diaconate within their Cardinalate, which follow these churches.

SS. X I I . Apostolorum became vacant due to the death of the Most Reverend Father Anthony Mariae S. R. E., who was a Cardinal Priest during his lifetime, Panebianco, and was assigned to the Most Eminent and Reverend Cardinal de Neto.

S. Augustini became vacant due to the death of the Most Reverend Father Friderici Iosephi S. R. E., who was a Cardinal Priest during his lifetime, Schwarzenberg, and was assigned to the Most Eminent and Reverend Cardinals Monescillo and Viso.

S- Eusebii became vacant due to the resignation and the choice to accept another Title, that of S. Mariae de Pace, made by the Most Eminent and Reverend Lord Dominic S. R. E., who was a Cardinal Priest, and the Diaconate of S. Mariae de Scala became vacant due to the death of the Most Reverend Father.

[*Latin ed. p. 571*]

FROM THE CONSISTORY ACTS 571. To His Eminence and Most Rev-

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erend Lord Cardinal Theodoli, addressed by me, Peter, while I lived, as Cardinal Deacon of the Sacred Roman Church, Lasagni. The Diaconate of Saint Adrian is vacant, due to the resignation and the choice of another Diaconate, namely the Diaconate of Saint Mary in Cosmedin, made by the late, while he lived, Joseph, Cardinal Deacon of the Sacred Roman Church, Ugolini, to His Eminence and Most Reverend Lord Cardinal Mazzella. Furthermore, the Most Excellent Consistorial Advocates insisted, more and more insistently, for the pallia for the Churches which were provided for in the preceding and present Consistory, or which were made known in this last one, namely: for Toledo, Oporto, Santiago de Compostela, Burgos, Acqui, Gnesen, and Posen; for both the Churches of Mantrega and Ottawa-Cornwall, newly raised to the metropolitan rank, by the favor of the Most Reverend Lords, Edward Charles Fabre and Joseph Thomas Duhamel, and also for the Cathedral Church of Warmia. These pallia were endowed with a privilege by the late, blessed, and revered Pope XIV.

FROM THE SACRED CONGREGATION OF THE COUNCIL OF PENNE. CONCERNING THE RIGHT TO INSTITUTE. February 27, 1886. Session 24, chapter 18; Session 25, chapter 9, concerning Reform. A SUMMARY OF THE FACTS. The Archpriestly Church of Saints Paterian and Andrew in the town of Colliscorbini has been provided with a pastor for many years through appointment, although it is asserted that the region is subject to patronage. Formerly, the Archidiacon, for the time being, of the Cathedral Church of Penne, was accustomed to grant the canonical institution to the Archpriest so designated. Furthermore, this right appears to have been peacefully exercised by the Archidiacon until recently.

[*Latin ed. p. 572*]

572. PINNEN. During that century, due to the invasion of the Franks, the exercise of ancient rights was either prohibited or abandoned. However, in the year 1847, when the aforementioned parish was vacant, Bishop D'Alfonso brought the matter back to consideration; and he recorded in the registry of the curia that, for many centuries, archdeacons had exercised the right concerning the Archpriests of Colliscorbini; the last archdeacon who had used this right, at the end of the preceding century, was a priest named Scorpion, who, like his predecessors, claimed to be the Ordinary of Colliscorbini. It is unknown whether this was due to a partial prelacy; but it is more likely that this power, almost episcopal in nature, was preserved from ancient custom and law, by which the archdeacons exercised a vicariate jurisdiction on behalf of the Bishop in the cathedral churches. However, since, according to the concordat, all rights were taken away from secondary prelates, this aforementioned institution could not be granted without a special delegation. Nevertheless, that Bishop desired that the Archdeacons of the Cathedral grant testimonial letters concerning

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the canonical institution of the Archpriests of Colliscorbini, made by the Ordinary, and that, with delegated, not ordinary, authority, they should admit them to possession. And so the matter proceeded peacefully, with the same Bishop D'Alfonso twice granting the aforementioned right of institution to the Archdeacons. However, with the present Prelate in office, when the aforementioned parish became vacant for the first time, the Archdeacon granted the letters of institution to the elected priest, with the consent of the Bishop, who, however, now admits that he was then led into error by excessive trust in the Archdeacon, who was also then acting as provicar general. But in the year 1881, when the parish of Colliscorbini again became vacant, and a new parish priest was elected, the Bishop himself wished to grant the letters of institution to him, and also to grant him the actual possession of the benefice; and at the same time, he warned the Archdeacon, that if he presumed to have any right in this matter, he should appeal to the Sacred Congregation of the Council.

[*Latin ed. p. 573*]

PINNEN. Disputation 573. The author notes that this matter, placed outside the realm of controversy, concerns a right that has been observed for a memorable time; just as the faith of the present Bishop's predecessor, who in the year 1847, in the records of the episcopal curia, dated December 30th, stated: that from a memorable time, the Archdeacons of the Cathedral had the right to appoint an Archpriest of Colliscorbini, that is, after a presentation of candidates and the Bishop's approval. Nor does the modern Bishop conceal this, although he believes that this occurred because the ancient Archdeacons of the Cathedrals exercised many rights that no longer exist today; and therefore, he believes that this right to appoint the Archpriest of Colliscorbini has also fallen into disuse. However, the Bishop's argument, according to the author, has a manifest equivocation in its basis and foundation. For the author notes that "institution" and "to institute" are understood in many ways, as Barbosa de offic, and potest, epis, alleg. 72 n. 172j states, and especially in three ways, as Van Espen iur. Eccles, univ. part. 2, sect. 3, tit. 9, c. 1, n.l - ibi - « Prosper Fagnanus assigns three species of institution in Cap. Cum ecclesia tit. de causa posses, et propriet. The first species is a corporal institution, that is, the granting of possession; the second species is an authorizable institution, that is, the approval for the care of souls; the third species, which is intermediate between the corporal and the authorizable, is what they call 'collati vam'. » Furthermore, the corporal institution differs from the authorizable and the 'collati vam'. Conversely, the authorizable and the 'collati vam' are not at all distinguished in practice: since the former confers the office, that is, the care of souls, while the latter confers the benefice or title, Barbosa loc. cit. n. 175. Hence, the first species of institution is almost never expressed without the epithet 'corporal' being added to it; while the second and third are often and in-

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discriminately called by the same name - 'institution'. DEFENSE OF THE ARCHDEACON. Indeed, it is undoubtedly the case that the first species of institution is among...

[*Latin ed. p. 574*]

574. PENNE. "The privileges of the archdeacons are enumerated, chapter 7 concerning the office of the archdeacon. – There – 'In a certain constitution of ours, however, we have already expressly stated that the institution of benefices, both of those pertaining to stipends, as well as those pertaining to dignities, should belong to the archdeacon himself.'" It is not at all true that an institution is a valid or collating institution. Van Espen, *Jura Ecclesiastica Universalia*, part 1, title 12, chapter 1, number 20 – there – "The corporal institution, or the mission into possession, according to common law, pertains to the archdeacon, chapter 7, title concerning the office of the archdeacon; but the valid institution, or the institution conferring a title, of which the rule of law speaks, namely, that a church benefice cannot lawfully be obtained without canonical institution, pertains, according to the canonists, to the Bishop alone, according to chapter 4, title concerning the office of the archdeacon." Therefore, it follows that the Bishop's conjecture is incorrect; for the Archdeacon of Penne claims not a corporal institution, but a collating institution conferring a title. Furthermore, he observes that, even if it were the case that, formerly, the valid institution, or collating institution, belonged to the archdeacons according to common law; it does not follow that the Archdeacon of Penne cannot validly institute someone to the special benefice of Colliscorbini according to singular law. Indeed, since we see that the archdeacons have lost their jurisdiction everywhere, and that the Archdeacon of Penne himself has lost all the ancient rights, except for one, namely, the right to institute the parish priests of Colliscorbini; it must be concluded that this right belongs to him not according to common law, but according to some special title. Moreover, the advocate continues, modern law does not prohibit the Bishop from approving those presented for parochial benefices, while the archdeacon, or another ecclesiastic inferior to the Bishop, validly institutes them, with the support of some special title, or a legitimately prescribed custom. Indeed, the Council of Trent, session 24, chapter 18 concerning the reform of the collation of parochial benefices, expressly warns: "But when..."

[*Latin ed. p. 575*]

PENNE. 575 "The institution [to a benefice] must be performed by someone other than the Bishop; therefore, the Bishop alone shall choose the more worthy from among those deemed worthy, whom the patron shall present to him, to whom the institution pertains. > And in Session 25, chapter 9: 'It is permitted to the Bishop to reject those presented by patrons, if they are not suitable. But if the institution pertains to a lower office, nev-

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ertheless, they shall be examined by the Bishop according to other statutes.' > Hence, Van-Espen, *op. cit.*, part 2, section 8, title 9, chapter 1, number 6 and following, explaining the Council of Trent, Session 14, canon 12, concerning reform, rightly observes: 'This text demonstrates that the Fathers of the Council of Trent supposed, by right, that the institution of benefices pertains to the Bishop; yet, they also sufficiently suggest that it can, by privilege, pertain to another, even a lower one; which, in turn, Session 24, chapter 18, concerning reform, more openly acknowledged in the words: 'Whereas, etc.' Here, the Synod speaks of an institution that can be authorized, or the granting of a title, as has been previously demonstrated in section 3, title 5, chapter 4. Not only by privilege; but it is also inferred from chapter 6, title concerning institutions, whose rubric states: 'Institutions can, by special right, pertain to non-bishops, and during a dispute with a diocesan, they are defended in possession.' > From this, Fagnanus, number 16, states that it is certain that the right to institute can be acquired by prescription. Indeed, in the cited chapter 6, Innocent III responded to the Archdeacon of Richemundiae, that he was holding the right to institute, because the Archdeacon there had proven that he and his predecessors had been in continuous possession of the right to institute; although, by common law, only the Archdeacon is entitled to the physical institution, chapter 7, title concerning the office of the Archdeacon. > Given these circumstances, since the right to institute can be acquired either by prescription; Barbosa, *de canonie, et dignit.*, chapter 5, number 30; or by foundation; Barbosa, chapter 4, concerning the office of the Archdeacon, number 5; or by concession of the Bishop; Pitonius, *discept.* 20, number 13; or by an apostolic privilege, S.C. C. of July 27, 1867; it follows that the patron can invoke any of these titles to protect the Archdeacon of Penne."

[*Latin ed. p. 576*]

576 PINNENSIS. For it is supported by an unforgettable prescription, "whose virtue and operation is that, by its power, anyone may claim a title of greater rank, without the necessity of proving it, since this very unforgettable observance suffices as proof." See *De Luca de canonie, discept., 11, no. 6; Sperei, dec. 37; Burat. et add. decis. 435 et 673; Cels. decis. 110; Apont. decis. 2, dec. 101, p. 10 recent; and throughout Merlin, decis. 593, no. 28; Menoch. cons. 1023, no. 3 et 4.

With these points established, the patron, addressing the objections raised against him, observes that the Bishop unjustly offends with these words, "in this matter, by our ordinary authority in the matter," which the archdeacon uses in the letters of institution. Indeed, these words can be turned against the Bishop; for, since the archdeacon formerly exercised many functions as a vicar of the Bishop, the archdeacon of Pinnensis, by the words cited, indicates that he is not acting as a vicar of the Bishop, when he adds the limitation "in this matter," thereby clearly showing that

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such a right belongs to him by a title of greater rank.

Nor is it permissible to reproach the Bishop for granting the archdeacon the power to delegate the corporal institution, and the other, to impose censures against those who neglect the institution letters; for these rights follow from the very act of instituting. Nor can it be usefully objected that, as the Bishop states, according to the Concordat of the year 1741 between Benedict XIV and Charles III, King of both Sicilies, all such rights have been abolished, so that no prelature remains. However, from what has been demonstrated above, the archdeacon of Pinnensis has the right to institute by a title of greater rank; and the Council of Trent, by which we live, has not innovated in this matter, at least with regard to benefices or parishes already existing, as the Rota decided before Molin, dec. 168, no. 6, §. Not withstanding - there - "that (foundations completed before the Council) the Council did not abolish, nor did it innovate anything in them, and this is to be understood in session 24, De reform., chapter 18, verse. And with the institution, and session 25, De reform."

[*Latin ed. p. 577*]

PENNE. 577 c. 9, verse. "But if [the Council] only wished to provide for those of lower rank, and in chapter 12, session 14, concerning reforms, so that in the future, in new foundations of benefices, no one, except the Bishop, might reserve [a benefice] for another, even with his consent, as the Sacred Congregation explains through Fagnanus, Moret, Corrad, Marius, Anton, Vivian, in the aforementioned places." Furthermore, he states that this kind of right, sought from time immemorial, could in no way be proven to have been abolished by Benedict XIV; rather, the contrary is evident. Indeed, the Bishops who governed the church of Penne at that time, if the archdeacon's right had been violated in the agreements concluded between the Holy See and the Kings of Sicily between the years 1741 and 1818, would certainly not have, as before, issued letters of institution to the archdeacons. The Bishop adduces a reason why he is not to be assisted in this matter, based on what is objected concerning the interruption of prescription. Firstly, the interruption occurred at the beginning of the last century, when the prescription had already been perfected, since it had not only exceeded one hundred years, but preceded the very Council of Trent, and is, as is undoubtedly admitted, of ancient standing. Indeed, an interruption occurring after the prescription has been completed does not affect it in any way, as De Luca, in *De iudiciis*, book 2, chapter 21, number 64, states: "After [prescription] has already been perfected, or completed, to the point that it has confirmed the right of the possessor, then a subsequent interruption, or the discovery of an alien right, does not prejudice him, nor does subsequent bad faith stand in the way, because these things indeed prevent prescription from being perfected, but they do not destroy a prescription that has already been perfected." Secondly, the interruption

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of which we are speaking does not arise from the fact that the Bishop at that time contested the archdeacon's right, but because, with the French invasion, all rights of patronage were abolished on December 22nd of the year 1808. Hence, in the year 1813, when the archpresbytery of Colliscorbino was vacant, the civil government of that time, by a diploma of May 8th, appointed an archpresbyter.

[*Latin ed. p. 578*]

578 PINNE. He named [the candidate], and entrusted the institution to the Bishop, who instituted him; just as, in the presentation of the same candidate on October 13, 1814, the same Bishop instituted an archdeacon of the cathedral church of Penne, disregarding the right of collation to the Holy See. However, it is well known, as De Luca points out in the cited work, number 31, that prescription, even if not yet perfected, does not suffer interruption, "by unjust accidental impediments, or even by those arising from chance, such as from human or divine war, from the incursions and occupations of enemies or robbers, etc.; for which impediments, according to their diverse nature, either the continuation of the prescription is feigned, as if the interruption had not followed, or, after deducting the time impeded, it continues within the limits." In fact, it is certain, he says, that after the aforementioned disturbance, the Bishops of Penne have not at all challenged the right of the archdeacon. For after the aforementioned collation of 1813, the archpresbyterate first became vacant under Bishop Ricciardone, who paid the tax for life in order to grant the archpresbyterate. His successor, the Most Reverend D'Alfonso, indeed believes that the right in question does not belong to the Archdeacon of Penne, according to ordinary law; but without hesitation, he decreed that the Archdeacons could issue testimonial letters by delegated right. Since the present question concerns the law, and not the name, it seems worthy of consideration whether this pertains to the Archdeacon of Penne, either according to ordinary law, or rather, according to delegated law, provided that in some way it pertains to him. DEFENSE OF THE BISHOP. On the other hand, the Bishop does not deny that, formerly, along with other rights, this right also pertained to the Archdeacons of Penne, namely, the institution of the parish priests of Colle Corbino; but he only wants to say that they no longer enjoy this right today. And this can easily be demonstrated. And first of all, it is universally known that the ordinary collator and institutioner of all benefices in the diocese is the Bishop.

[*Latin ed. p. 579*]

PINNEN. 579 inhabitants, a city, with a chapter of canons and approximately 12 religious houses. From this, if any controversy arises regarding the right to confer a benefice, or to institute to it, and one party does not conclusively prove that the conferral or institution pertains to him, the judg-

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ment should always favor the Bishop, since he himself has an intention founded on the law. And let the authority of Reiffenstuel be cited, who in book 3, title 5, concerning ecclesiastical property, § 7, states: "Therefore, the conferral of benefices pertains to the local Bishop, so that he may have a well-founded intention regarding the institution and deposition of priests and other clerics in the benefices of his diocese; and if another claims this for himself, he must prove by special law that it pertains to him. Thus, from the laws cited above, it is clear that the conferral of benefices in his diocese, insofar as it pertains to common law, belongs to the Bishop; and this is noted in the Glossa on chapter 18, verse D, concerning elections, in 6, the Abbot, with the attached decree number 2, concerning heretics, and in chapter concerning the Church of Vulterana, number 8, concerning elections, in John of Selva, volume 15, treatise on Benefices, part 2, question 22, numbers 1 and 41, and in Garcias, part 5 on Benefices, chapter 2, number 235, and elsewhere. The acts of the court of Eugubina concerning legal matters, before the Sacred Congregation, on August 7, 1773, § 14, and elsewhere, confirm this. Therefore, since the presumption is in favor of the Bishop's right, and the faculty of instituting cannot be recognized in a lower cleric (in this case, an archdeacon), unless he himself clearly proves it and refutes the Bishop; it remains to be seen what title the archdeacon can present in this matter. Indeed, he alleges that he has made institutions, which he has carried out over many centuries, and he cites papal bulls in which the Archdeacon of Pinnensis calls himself "ordinary in this matter," and proceeds "by our ordinary authority." But this argument does not seem conclusive, but rather open to explanation. Indeed, it is clear that institutions of parish priests in Colliscorbini were made, and especially those expressions "ordinary in this matter, by our ordinary authority."

[*Latin ed. p. 580*]

580. [The argument] seeks to demonstrate either the existence of some prelate's office; or some apostolic privilege; or, finally, the most extensive jurisdiction, which formerly the archdeacons enjoyed as vicars and officials of the bishops. But first, the very present archdeacon is excluded, since no certain trace of such a prelate's office exists; nor is anything remembered about it. Secondly, although an apostolic privilege is asserted, it does not seem to be proven. Indeed, in the aforementioned bulls, no mention is ever made of the granting or existence of this privilege, which would certainly have been done if the archdeacon had proceeded by virtue of this privilege; rather, it seems to be denied by the words "by our ordinary authority." Furthermore, privileges, in order to be valid, must be proven, especially when they are detrimental to common law and limit the jurisdiction of the bishops, as is stated in the preceding section. To appeal to the very fact itself, and thence to argue for a privilege, when the reason for that very fact is being sought, seems to be fallacious, and to resemble a petition of principle,

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as logicians say; it would be nothing other than a presumptuous assertion. Therefore, since the prelate's office is excluded, and the apostolic privilege has not been proven, it remains to consider the archdiaconal dignity and office itself; through which the matter seems to be best explained. And indeed, the power of the archdeacons was formerly very great throughout the dioceses: they were called the "eyes of the bishop," they were first among the presbyters, and were like a natural vicar of the bishop, cap. 1, De off. archici., so that "with the exception of sacramental matters, there was hardly any business that could be carried out without the archdeacon." Vecchiotti, vol. 1, p. 297. Furthermore, this power, as it stemmed from the canons, was considered ordinary, Barbosa, lib. i, Iur. eccl., cap. 24, n. 36; Reiffenstuel, l.c., n. 7; S. C. C. in Monasterien, 19 September 1769, § 7, and this is the common opinion. However, this did not prevent the bishop from often proceeding with extraordinary and delegated authority.

[*Latin ed. p. 581*]

PENNE. 58. Non dicendum est quod archidiaconi illius temporis ordinarii fuerunt solummodo in institutione corporali ad beneficium; non vero in institutione auctorizabili, seu collatione. Quoniam, dum canones institutionem quidem corporalem Archidiacono spectant et quasi reservant, cap. 7, De Officiis Archidiaconi; ita tamen non sunt intelligendi ut eidem negent ius ordinarium ad alias institutiones, collationes, nempe et auctorizabiles. Etenim, allegata iura possessionem beneficii, quam Episcopus saepe tribuere non solet, utpote rem vel nimis gravem vel nimis ministerialem, Archidiacono veluti ministro reservant; collationem et auctorizationem vero eidem non reservant, quia in his plerumque potiores partes agit Episcopus. De cetero, non excluditur, imo in collatione quoque et auctorizatione archidiaconi procedere optime posse, auctrix est S. G. C. in Gerunden. 20 Novembris 1723 §. 1 apud Zamboni tom. 4 v. Archidiaconus §. 4. Et habetur comprobatum apud Tomassini De vet. et nov. ecclesiae disciplina, part. 1, lib. 2, cap. 17 seqq. Itaque factum institutionis, de quo quaeritur, utique explicatur per potestatem et officium olim archidiaconi propria. Et quum optime res exinde explicetur, iam funditus videretur convelli suppositio praelaturae aut privilegii apostolici, quorum nulla est certa probatio. Neque subsumatur per verba « in hac re ordinarius » et praecise per verba in hac re, archidiáconos innuere iure proprio et peculiari, seu ex privilegio, egisse. Namque 1. quod privilegium hic adsit, non evincitur, imo videtur excludi ex eo quod de eodem numquam fiat mentio, et archidiaconi dicant se uti sua ordinaria potestate, juxta superius dicta. Sed 2. allegata verba possunt explicari, et indicare, quod aut illa institutio in specie, aut nonnullae institutiones, aut, si vis, institutiones in genere in dioecesi Pinnensi, archidiaconi, ut quid illis proprium negotium, tunc ab Episcopis relinquebantur. De cetero, quod

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rem luculentius explicat, atque melius.

[*Latin ed. p. 582*]

582 PINNEN. The arguments by which it is demonstrated that the Archdeacons possessed the authority to issue bulls and to establish parishes in Colliscorbini are found in certain phrases with which these bulls are concluded. From these, it appears that the Archdeacons did not merely proceed according to some private right; indeed, they were not supported solely by the Archdiaconal authority and office; but rather, they were armed with the extraordinary and delegated jurisdiction of the Bishop. For in the bulls, it is added concerning the ordinary establishment of the parish, "after removing any illicit possessor, and restraining those who oppose by ecclesiastical penalties and censures." It is indeed certain that "all and only those ecclesiastical superiors who possess jurisdiction in the external and contentious forum" can impose censures; Gury, *Tractatus de Censuris*, article 2, number 491, and thus the Supreme Pontiff, his legate, superiors general or provincial of religious orders, Archbishops, and Bishops, Gury, *loc. cit.*, number 942. However, even in ancient times, Archdeacons were prohibited from imposing censures, except from the chapter *Archidiaconus 5 De Off.*; unless, that is, they did so with the delegated authority of the Bishop, as Reiffenstuel notes, *loc. cit.*, number 9; in the same way as modern vicars general, as testified by Gury, *loc. cit.*. From all of this, it would seem that, if the Archdeacons formerly granted the establishment of parishes in Colliscorbini, and indeed imposed censures, it was done in virtue of the Archdiaconal dignity, then in force, but strengthened and corroborated by the delegated jurisdiction of the Bishop. But, brought to this question, the conclusion is readily apparent. Indeed, if in past times the Archdeacons exercised many rights, now all these things are, as the present Prelate notes, forgotten, and therefore, with them, the right of institution also ought to have receded from use. "Now, at this time," Vecchiotti, *loc. cit.*, "the power of the Archdeacons has almost disappeared, and all their office has been reduced to this: to assist the Bishop in general ordinations; concerning which, see the constitution of Benedict XIV, *Ex Quo Dilectis*, and the decision of the Sacred Congregation of the Council in Trent, January 28, 1848."

[*Latin ed. p. 583*]

PENNE. 583 And it is the case that, specifically concerning the diocese of Penne, these rights of the Archdeacons have ceased or have been abolished, as testified and affirmed by Bishop D'Alfonso in the aforementioned document. Although, indeed, in the articles of the concordat between Benedict XIV and Charles III in the year 1741, nothing can be explicitly found whereby the power of the Archdeacons in this matter was limited, without doubt, the concordat of the year 1818, concluded between Pius VII and King

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Ferdinand, can be invoked. For therein, article 11 states: "To the Bishops is reserved the right of bestowing parishes, whether by free collation, or by ecclesiastical, royal, or lay patronage." - there - "His Holiness grants to the Bishops of the kingdom the right of bestowing parishes, which will become vacant at any time during the year; with prior agreement in parishes of free collation, etc." But whatever may be the case regarding the argument presented, it must be understood, and indeed, even more so, that something else exists which seems to be urged against the Archdeacon. Indeed, although it is true that, on the occasion of the French invasion, certainly at the beginning of this century, the exercise of this institution was interrupted. Later, in the year 1847, it was certainly re-established; but this re-establishment appears rather detrimental than beneficial to the rights of the Archdeacon, since at that time, it was permitted to grant this institution to him, but by the authority of the delegated Bishop. But delegation is something temporary and transient, as Ferraris V states: "To delegate." It neither provides a true title, nor is it sufficient for preserving the possession of any right as one's own. Furthermore, Ferraris V, in the section §. 3, n. 4: "Titles which, by their very nature, do not tend to the transfer of ownership, such as Commodatum, Depositum, Precarium, and the like, nor do they provide the conditions for usucaption, and are of no benefit for prescription." Indeed, as is evident, these titles can validly be urged against their holders. Given this situation, and also admitting that previously the Archdeacons of Penne held the parish of Colliscorbini by their own and particular right, it is now the case that, for almost a century, they have either not exercised this right, or have not exercised it as a right belonging to them.

[*Latin ed. p. 584*]

PENNE. They exercised [this right] previously. Therefore, a custom appears to be contrary to the rights of the Archdeacon. Furthermore, a custom legitimately prescribed, especially if it leads to a return to common law, and restores common law, is to be given the greatest consideration, indeed, it would seem to be decisive. With these and other observations in mind, the purpose was to resolve the question: Does the Archdeacon of Penne have the right to appoint pastors of Colliscorbini in this case?

RESOLUTION. The Sacred Congregation, after discussion on February 27, 1886, decided to respond: Negatively.

FROM WHICH THE FOLLOWING CAN BE GATHERED:

I. There are three forms of institution, namely, the corporal or the granting of possession; the authorizable, that is, the approval for the care of souls; and the collative, which is a form intermediate between the corporal and the authorizable, and which is not sufficiently distinguished from the

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former.

II. Among the privileges of Archdeacons of Cathedrals, the first form of institution, namely, the corporal, was formerly removed from the chapter [of the cathedral], but not the authorizable or collative forms; canonists maintain that these belong by right to the Bishops alone.

III. Although, according to common law, the collative or authorizable institution of a benefice belongs to the Bishops, it does not exclude the possibility of it being acquired by others, by those inferior to the Bishop, either through a granted privilege, or through custom or prescription.

IV. The argument that the right to appoint pastors of Colliscorbini could have been held by others contrary to the rights of the Archdeacons in ancient times, does not apply today, since there are various reasons to prove that it no longer exists; the principal reason being that the Concordat of the year 1818 transferred the right to confer all parishes to the Bishops of the Kingdom.

V. When the Bishops have a well-founded claim to the right regarding the collation and institution of benefices, neither can claim this right for themselves, unless they conclusively prove it.

[*Latin ed. p. 585*]

PINNEN. 585. It pertains to him by some just title, namely, by a privilege, or by prescription and custom already established. V I. Now, however, it is certain that all the rights, privileges, and power of the Archdeacons have almost completely disappeared and are neglected, except for the function of assisting the Bishop in general ordinations.

"H=S-î-©-Ç-S=B= ORITANA ELECTIONIS SEU NOMINATIONIS" (ORDINATION ELECTION OR NOMINATION). February 27, 1886. SUMMARY OF FACTS. By the Constitution of Paul V, the collegiate church of Francavilla Fontana consisted of five dignities, fifteen canons, and twenty-eight minor canons. However, due to the infamous law of suppression, in February 1884, only one dignity and four canons remained of the ancient dignities and canons; and these were, for the most part, infirm due to old age and physical ailments. Therefore, the Bishop elected three dignities and seven honorary canons from among those he considered the most worthy, with the participation of others. And on February 21, 1884, he decreed the taking of possession, which was announced to each member of the chapter by the college's procurator on the 19th of the same month, through a notice posted in the sacristy, and originally entered in the book of chapter proceedings. This taking of possession, performed by the Bishop together with the chancellor, was attended by the only remaining dignity, the Archpriest, the canons, and all the participants, except for the infirm. The assigned seats for the elected were arranged according to the order of dignity and canonry.

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After three months, some of the participants opposed this election and taking of possession, and presented a petition to the S. C. C. on June 29, 1884, in which, after stating what I have stated thus far, they vehemently demanded the nullity of this election. However, since another question regarding the nullity of the election of the honorary canons in the Church was pending before the S. C. C.,

[*Latin ed. p. 586*]

586 The collegiate church of Oritana, belonging to Manduria, which the aforementioned Bishop of Oritana had established without the consent of the chapter, on August 10th of the same year, a decree was issued: "Let a response be awaited regarding another similar matter concerning the church of Manduria." And indeed, regarding this question concerning Manduria, the Sacred Congregation of Rites, in a plenary session on April 18, 1885, decreed: "According to what has been presented, the election and nomination of honorary canons, as mentioned above, are not to be approved." When this decree became known to the patron of Francavillae, he immediately, on May 13, 1885, brought the matter before the Sacred Congregation of Rites, requesting that the nullity of the election of dignities and honorary canons in the collegiate church of Francavillae Fontana be declared. On the same day, the response was: "Regarding the resolution of the Sacred Congregation of Rites of April 18th of the preceding year, concerning Oritana, it is to be understood that the election or nomination is likewise to be considered null and void in this case, and this is to be notified to the auxiliary bishop." To this rescript, the dignitaries and honorary canons vigorously objected.

A Synopsis of the Arguments.

DEFENSE OF THE PARTICIPANTS.

The patron, in order to demonstrate that the election of canons and dignities was null, argued: that it has been established by law that the creation of honorary canons in cathedral and collegiate churches cannot be done solely by the Bishop; but absolutely requires the consent of the chapter; so that "if this consent is lacking, such a creation must be considered null." This is supported by Scarfantonius, *De Canonicis*, Book I, Title 14, number 13, and by the *Concilia Nardi*, Title 2, page 307, and by Bouix, *Tractatus de Capitulis*, chapter 16, § 4. Furthermore, the Sacred Congregation of Rites expressly declared in the case of Fulginatensi, on February 26, 1639, regarding the doubtful question "Whether the Bishop, by ordinary authority, can create honorary canons in his church without the consent of the chapter," that "the Bishop cannot." And this was confirmed in another case of Fulginatensi, on August 6, 1808. However, it was established that, in the election of dignities and honorary canons in the collegiate church of

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Francavillae Fontana...

[*Latin ed. p. 587*]

ORITANA 587, the proceedings having been completed by the Bishop, entirely lacked the consent of the chapter; therefore, it must be concluded that this election is vitiated by nullity. However, the advocate argues, this argument loses its force when considering the additional factors involved. It is well known in law that honorary canons can be created among the clergy who are most distinguished in doctrine or piety: thus, Nardius, in the aforementioned passage. But, the advocate states, information received from the Bishop's auxiliary indicates that those elected were entirely lacking in common knowledge; which demonstrates that the elected are utterly deficient in the necessary merits for obtaining such an honor. Furthermore, according to the teaching of canonists, in the election of honorary canons, regard must be had for the number of titular canons. Fagnanus, number 9, title "De Praebendis," and Scarfantonius, "De canonicis," book 1. And John Andreas, in chapter "Dilectus" of "De Praebendis," number 12, states this rule: "If there are forty prebends, two or three can be received; if five or four, only one." But in the collegiate church of Francavillae Fontanae, only one dignity and four titular canons exist due to recent circumstances; therefore, the Bishop of Oritana, by electing four dignities and seven honorary canons, not only neglected the aforementioned rules of the canonists, but also did not at all consider the dignity and the titular number of the aforementioned church. Indeed, through this election, the number of participating priests has been reduced to twenty-one: and if consideration is given to those who, either due to old age, or due to bodily infirmity, or due to other duties, are unable to attend divine services, it is clear that, due to this election, the number of participants has been greatly reduced; and therefore, not only has the worship of the church been diminished, but also the remaining participants have been burdened with greater obligations regarding choral service, the celebration of Masses, and other duties. It is also of no consequence that the participants were aware that by attending that election, they were participating in the act of conferring the dignities and honorary canonries, and that the Chapter held a meeting in 1884, in which...

[*Latin ed. p. 588*]

588. The Oratory was elected Master of Ceremonies. For, there were present at the act of possession, in order to remove scandal and to avoid the Bishop's anger; and through this, they gave tacit, but not express, consent, which is required by law. The Chapter, indeed, took place on July 1884, after those judged to be participants in the nullity had been instituted. However, the advocate maintained that the nullity should be entirely denied, because the rights of the Chapter would be violated, and there is no grave reason to suggest otherwise. Firstly, because dignities and honorary

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canons were elected, who did not seem worthy of such honor, neither by extraordinary knowledge, nor by exceptional virtue, nor by outstanding merits towards the Church. Secondly, because four dignities and seven honorary canons were elected in the Church, in which there are only one dignity and four titular canons. Thirdly, because through this election, not only was the worship of the Church diminished, but also greater and more serious burdens were imposed on the remaining participating priests.

DEFENSE OF THE DIGNITIES AND CANONS. The other advocate, on behalf of the dignities and canons, argued with all his might that the nomination in question was entirely valid. Firstly, he proves that the participants, or beneficiaries, do not constitute a Chapter, according to Cardinal De Luca, *Annotationes ad conc. Trid.*, disp. 20, n. 7, and the Holy See, *soli canonici et dignitates, qui canoniam habent in titulum collativum vel ab ipso ordinario collatore, vel a Summo Pontifice*, according to the well-known teaching of Compostellanus, in cap. I, n. 4, Pignatelli, *consult.*, tom. 4, and *s. Rota*, before Verall, decision 84, n. 1, and before Coccino, decision 1595, n. 8; De Luca, in disp. 19, n. 5, *de canon.*, and cap. Furthermore, if it is required for the validity of the election of honorary canons that the Bishop question the Chapter, this requirement could easily have been fulfilled when this election took place. For at that time, only five members of the Chapter were present, namely, one dignity and four canons; and these all, not only by the Bishop, but also...

[*Latin ed. p. 589*]

The canons numbered 589, but, due to the necessity of performing the sacred functions, and due to the infirmity of each individual, they themselves urgently requested the holding of an election. In the election of true and proper canonries and dignities, with the exception of the elections of the higher dignities and prelacies, the silent consent, or tacit approval, is sufficient, which must rather be deduced from actions than from words: thus Pitonius argues, in *Disputationes Ecclesiasticæ*, 5, n. 132, and 24, n. 10. If this silent consent is sufficient for true canonries, much more so should it be sufficient for the election of honorary canonries, which obtain only an honorary right by grace, and which take nothing away from others in terms of material emolument. And the advocate observes that, with the exception of a few cases, such as in the election of additional canons in cathedrals, in such a case, if the canons dissent, the Bishop can do nothing. - Scarfant, *Ad Ceccop. lucubr. canon.*, lib. 4, Tom. II, tit. 12, n. 15. - In other cases, the Bishop is not obliged to seek anything other than the advice of the Chapter. But in this case, not only were all those present in February 1884 informed of the matter, without exception, but they were also asked for their formal consent, and they gave this consent before the nomination, during the nomination, and for 15 months after the nomination. During this time, they duly performed the canonical duties of their dignities and

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honorary canonries. They always exercised their rights peacefully, in the choir and at solemnities, in processions and at funerals. In the chapter meetings, they were treated as canons and participants without any opposition. Indeed, the advocate continues, the honorary dignities and canons occupied a fitting place in these very chapter meetings: and on July 7, 1884, all those present convened for the election of the master of ceremonies. From here, the advocate proceeds to address various difficulties; and first, he defends that those present gave their own consent in fact. For, on February 19, 1881...

[*Latin ed. p. 590*]

39. The vicars forane were invited by order to be present at the installation to the Dignities. Therefore, all understood what was being done. And the titular canons, and all the participants, except for the infirm, were present at this installation. From this, it is clear that all the participants approved and ratified the nomination, which had been publicly announced by the Bishop at that time. Otherwise, these very participants should have privately gone to the Bishop's house, to express their disagreement, and to issue a protest. But, on the contrary, they acquiesced, both then and afterwards. Regarding the excessive number of honorary canons, the speaker responded that this is prohibited, when there is a lack of members in the chapter of all the titular dignities and canons. But in our case, in February 1884, only one Dignity and four canons remained from the old canons, and some of these were infirm. With their deaths, the college of canons was extinguished, and, lacking the titular chapter dignities, the sacred functions on solemn days were performed by simple participants, with a clear distinction between the sacred service and the devoted people. To avoid this evil, it was necessary to nominate honorary canons, because, according to the cited work of Ceccoperio, *De Locutionibus Canon.*, book 1, title 1, number 22, such honorary canons should be created for the reason, namely, that the worship of the Church may be increased, and that these canons, once received, may be instructed in morals and ecclesiastical duties, and that they may serve both the Church and the titular canons in divine functions. But, even admitting this lost hypothesis, the speaker continues, that some doubt still remains about the validity of this election, a confirmatory decree must then be applied: but this grace is never denied, when it is expedient that the act, about which inquiry is made, be carried out. And there are several legitimate reasons for this confirmatory decree, namely, the fairness of the election, the personal qualities, and the merits of those promoted, and the scandal that would result from the deposition of the dignities and honorary canons, and their commendable service after the

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nomination. Which is firm-

[*Latin ed. p. 591*]

ORITANA 591: It is determined by the Auxiliary Bishop that dignities and honorary canonries should be earnestly recommended, so that maintenance might be granted to them gratuitously, in the holding of the office. After considering both sides of the matter, the following questions were proposed for discussion: I. Does the election in this case involve a nullity? And, if so, in the affirmative. II. Should the Most Holy [See] be consulted for a remedy in this case?

RESOLUTION: The Sacred Congregation, having knowledge of the matter on February 27, 1886, decided to respond: To I. Affirmative. To II. Affirmative, and with the understanding that the Ordinary should proceed to a new election, observing all due procedures, and taking into account the qualities of those to be elected and the service of the Church.

FROM WHICH WE GATHER: I. Honorary canons can be elected by the Bishop with the consent of the Chapter, or by the Chapter with the consent of the Bishop. II. In this matter, the consent of the Chapter did not seem to have been present; and therefore, the nullity of the election was declared.

(1) MELETIANA: CONSTITUTION REGARDING THE WILL OF EXCHANGE. February 27, 1886. By means of brief petitions. Anthony Vargas, in the year 1792, bequeathed the sum of 20,000 Maltese scudi, equivalent to 40,000 livres, under this condition, that two canonries, and two dignities, namely the decanalship and the primiceriat, should be founded in the collegiate church of St. Paul the Shipwrecked in the town of Vaux.

SUMMARY OF THE MATTER: (1) See Volume III, page 138, 140. Volume IV, page 189, 317, 579, 584, 585. Volume XVII, 554: where the Letters of the Fathers of the Holy Council regarding the establishment of honorary canons are mentioned.

[*Latin ed. p. 592*]

S92 MELËV1TANA. Interim, ex redditibus praedictae sortis, 1,240 librarum quotannis inter quattuor canonicos dividuntur, hoc modo: 400 pro decano, 320 pro primicerio, 280 pro priore canonico, 140 pro altero. Sed hi, per legem testamenti, sunt obligati ad contribuendo solidum 80 librarum pro sacristia; praeterea, quisque ex illis debet celebrare missam mensalem, et sunt tenuti ad solvendum onera capitularia et missam conventualem, sicut ceteri canonici. Et quamquam officium chorale omnes aequabiliter gravat, tamen hi quattuor canonici, propter novitatem fundationis, sunt exclusi ab emolumentis, vulgo "cassa d'anime," quae ex cura animarum ad capitulum pervenerunt. Notandum est, quod fundator praescribit, ut ex legata summa parva massa 1,000 librarum paulatim constitueretur, et eadem integra semper esset servanda; et lucrum ipsius vergeret in augmentum eiusdem, quoties non occurreret

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necessitas impendi pro emendatione immobilium. Denique, haec parva massa, paulatim aucta, anno 1883, summam 1,000 librarum attigit. In hoc statu rerum, quattuor canonici Vargas ad Sanctam Sedem venerunt, lamentantes se habere stipendia nimis parva, et haec postulantes: ut liceat eis restituere sacristiae decem scudos, loco quadraginta; et ut fructus mille librarum, quae formant parvam massam, possint adiungi triginta scudis supradictis, et aequibus partibus inter se distribuendi. Capitulum, accipiens preces quattuor canonicorum, assensit; et ipse Ordinarius non habet quid objiciat, sed considerat postulatum eorum iustum, attenta maxima difficultati in qua vergunt postulantes, convenienter pro munere vitam ducendi. Disceptatio Synoptica. Consideratum est, ex officio, in mutationibus voluntatem esse sequendam, et si canonici, auctis rebus pretii, maioris emolumenti necessitatem sentirent, PETITIO RESPUENDA VIDERETUR.

[*Latin ed. p. 593*]

"MELEVllTANA 593 has, similar to the condition of the church building, a need for resources; therefore, by subtracting 30 scudi from the sacristy and allocating them to the canons, it would seem that this action would compensate for the loss suffered by the canons." Furthermore, "it is in accordance with the law of nature that no one should become richer at the expense and injury of another." L. Iure naturae 206 ff. De reg. iur. et concordat L. Nam hoc 14 ff. De condici, indeb. - ibi - "For it is the law of nature that no one should become richer at the expense of another; reg. 48 iur. can. in VI." However, it is presumptuous to assume that, when those who have an interest, namely the chapter and the Ordinary, agree with equal minds and consider the aforementioned sum to be justly deducted and allocated to the four canons, that this will not cause a considerable loss to the church building. Elsewhere, the four canons of Vargas observe that their confreres of the previous foundation do not pay more than 10 scudi to the sacristy, even though they are more numerous and wealthier. Therefore, it would not seem just to burden those who are enriched with smaller contributions more heavily. The petition appears to be reasonable. Nevertheless, in favor of the petitions, it must be noted that the current offerings of the orators are so meager that, according to the testimony of the Bishop himself, they barely suffice for a decent sustenance. Furthermore, it is necessary to provide for the needs of the clergy through the union of benefices and other remedies, which, indeed, the Council of Trent, Session 24, chapters 13 and 15, permits and indicates. In particular, with regard to the perception of profit derived from a small fund, which, according to the testator's will, should be allocated to increase the endowment for the restoration of property, it is observed that the testator's intention is now impossible to fulfill due to the civil law of that island. Therefore, in order that the accumulation of profits does not increase indefinitely without purpose,

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these profits will be divided among the beneficiaries. It is certain that the founder's intention was to gradually improve the situation of the canons, making it more secure and comfortable; while also acquiring property, and the same was to be achieved through the accumulation of small sums. Acta, Tom. XVIII. C O XVI. 38

[*Latin ed. p. 594*]

594. It was decided to grant the request. According to the well-worn axiom of economists, the value of real estate, and consequently also of its fruits, increases over time, while, conversely, the value of money diminishes. Therefore, if the condition of the canons is improved, as they request, it would seem to be more in accordance with the testator's will than to obstruct it. Having considered these matters, the question arose as to how the requests should be granted. RESOLUTION. The Sacred Congregation, having considered the matter on February 27, 1886, decided to respond: For the sake of charity, after having conferred with His Most Reverend Eminence, the Cardinal Prefect, on January 27, 1886, through summary requests. SUMMARY OF THE CASE. Lawrence, Didacus, and Joanna Mansi, of the Diocese of Amalphitana, state that their family has not been able to satisfy certain payments for several years, which were to be made through the favor of certain chaplaincies. After the death of the chaplains, and with the family being in distress, they had forgotten their obligation. A portion of these payments has been outstanding since the year 1853, and another portion since the year 1864; and since each year the payments amount to approximately 129 *libellae*, it is the case that today, from the annual, unpaid fruit of these payments, a sum of 2506 *libellae* is established. If the income from this sum is increased by six percent annually, there will be a total of 282.23 *libellae* each year. And from this, the petitioners request that a sacred endowment be established, in favor of a young man from the town of Scala, whom the Mansi family would perpetually name, with the obligation of contributing the aforementioned sum of 282.23 *libellae* to as many Masses as the Apostolic See deems appropriate. The Ordinary, declaring the requests to be just, and commending them in general, specifically noted: the income for...

[*Latin ed. p. 595*]

AMALPHITANA 595: The assigned endowment is not a proper donation, and therefore the right to name [the beneficiaries] should be reserved for the orators, rather than for the Mansi family. Disputatio Synoptica. PRAYERS TO BE ACCEPTED. Indeed, since the constitution of such a sacred endowment has the nature of a benefice, it seems that the right to name [the beneficiaries] can be granted to the orators; for "the founder or erector of a benefice, at the very beginning of its erection or foundation, can add whatever qualities, laws, and conditions he wishes,

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even those contrary to common law, provided they are not scandalous, impossible, and contrary to the nature of the benefice, and are agreed upon and approved by the Bishop." Cap. significatum 11 de Praeb.; cap. Praeterea 23 de iure patr.; and cap. Quanto 16 de censib.; and it is the common opinion of the Doctors, as stated in the decisions of the Rota regarding new benefices, and in decision 2 regarding testaments, in ancient cases. PRAYERS TO BE REJECTED. But, on the other hand, it must be considered that the brothers Mansi are bound by conscience and by law to restore the sum that has been accumulated from unpaid dues, and to make the annual payment of the dues; indeed, if they are not prepared to restore that sum accumulated from the dues, but only wish to pay interest on it, this very fact seems to require something of them. Certainly, an offering of six percent would be sufficient compensation, but it could be more beneficial to immediately have the sum of 2506 livres. Therefore, if the proposal of the brothers Mansi is considered in this respect, it seems that any special merit they might have, namely, a free donation, which is required in order for someone to become the erector of a benefice and its patron, would be lost. Furthermore, if the sacred endowment is approved according to the prayers, then the institution of chaplaincies would be lost, and perhaps even the very pious intention itself would be altered. Moreover, "this [type of endowment] must only be done for a just and necessary cause." Council of Trent, Session 22, Chapter 6, on reform. Indeed, if the sacred endowment is established from that which...

[*Latin ed. p. 596*]

596. The Amalphitan territory is not very different, and perhaps this change would not be so great; nevertheless, it exists. Having noted these things, the question arose as to how prayers should be granted. RESOLUTION. The Holy Congregation, having knowledge of the matter on January 27, 1886, decided to respond: As requested, it is not expedient, and it is not in accordance with [our] opinion. HIERACEN. ERECTION OF A PARISH. On March 27, 1886. Through a summary of prayers. COMPENDIUM OF THE MATTER. The parish of the place of Gioiosa Superiore, in the Diocese of Hieracensis, has a section or fraction of inhabitants living by the sea, which is called Gioiosa Marina. This section is located one hour's journey from the parish church, which is located in the upper town. Furthermore, since the number of inhabitants by the sea and in the surrounding fields has greatly increased in recent years, and the distance from the parish is considerable, the need for a priest who resides there to administer the sacraments, etc., becomes increasingly evident. The Ordinary states that there are 340,000 ducats available for the erection of a new parish; but others promise further donations after the parish is established. Moreover, the parish priest, to whom a portion of the territory is to be taken in order to establish a new community, fully consents to the division of his parish,

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because his own remains complete and suitable. For these reasons, the Bishop implores the Apostolic See, so that it may be permissible for him to erect a new church, for the spiritual good of souls. SYNOPTIC DISCUSSION: GRACE TO BE GRANTED. Indeed, the Council of Trent, chapter 4, session 21, concerning reforms, states: "Bishops... in parochial or baptismal churches in which the people are so numerous that one pastor cannot suffice... shall compel a second pastor..."

[*Latin ed. p. 597*]

"It is necessary to add to the number of priests as many as are sufficient to administer the sacraments and to celebrate the divine worship. In those places where, due to distance or the difficulty of the parish, the faithful cannot easily access the sacraments and the divine services, new parishes may be established, even without the consent of the incumbent pastor, according to the form of the Constitution *Alexander III, incip. Ad audientiam*. To those priests who are to be assigned to newly established churches, a portion shall be assigned, at the discretion of the Bishop, from the fruits belonging to the mother church in whatever way it may be appropriate. What distance is sufficient in practice to warrant such a division is taught by Fagnanus, chapter *Ad audientiam*, number 18: namely, that distance which makes access to the parish church difficult for the parishioners, namely, a distance of two or three thousand paces; which certainly would be present in this case. Indeed, the *pagus* of Marinus is distant from the church by one hour's journey. Therefore, it does not seem doubtful that the Ordinary has the power, according to the cited passage from the Council of Trent, to establish a new parish, even without the consent of the pastor of the old parish, and even to deduct something from the latter's income for the support of the new parish. And this is all the more so when the pastor of Gioiosa, mentioned above, also consents to this establishment, and a dowry can be provided from somewhere other than by dividing the old parish endowment. THE REQUEST SEEMS TO BE DENIED. There is one difficulty, namely, that the dowry for the new pastor should not exceed 340 annual florins, which, it is clear, is certainly not sufficient for a livelihood. It does not seem prudent to establish a parish in which the pastor does not have the necessary means for his support. It is not wise, nor is it customary, to rely on promises concerning the future, which may fail. With these considerations, the question was raised as to how the requests should be handled."

[*Latin ed. p. 598*]

§98. HIERACEN. RESOLUTION. The Sacred Congregation, having considered the matter on March 27, 1886, decided to respond: Having been previously obligated by benefactors, in a legally valid form, to provide a supplement for the expenses until the sum of 500 livres is

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reached, as soon as the parish is established, the Bishop may proceed with the division and erection of a new parish. EX 8. CONGREGATION REGULARIS Regarding the solemn dedication of the saints, Confessor Camillus de Lellis, Founder of the Religious Congregation of the Ministers of the Infirm, and John of God, Founder of the Brothers of the Hospital, as Patrons for all Hospitals and the Infirm, and concerning the inclusion of their names in the litanies of the dying, the Most Reverend and Reverend Monsignor Miecislaus Cardinal Ledochowski. POSTULATIONS The Most Reverend and Reverend Monsignor William Cardinal Sanfelice, Archbishop of Naples, having taken the opportunity of the third centenary of the Apostolic approval of the Religious Congregation of the Ministers of the Infirm, which occurred in the year 1886, deemed it fitting to petition the Most Holy Pope Leo XIII, that he would deign to grant Saint Camillus de Lellis as protector of Hospitals and the Infirm, and to grant that his name be added to the litanies of the dying. Since Saint John of God, for the good of the Infirm and Hospitals, has also worked with equal zeal, and who, even many years before the charity of Camillus shone in Rome, laid the foundations for the reform of hospitals in his Valetudinarium in Granada, and gave examples; therefore, after consultations, the same petitions were presented for the praised Saint John of God by the Most Reverend and Reverend Monsignor Lucido Maria Cardinal Parocchi, Vicar of the beloved City, and Protector of the Brothers of the Hospital. These supplications were adopted by the Most Reverend Catholic Prelates of the world, and other most distinguished men in the Christian Republic, who made them their own, sending petitions to the Apostolic See, in which they demonstrated how useful and how opportune it would be, especially in these times, to...

[*Latin ed. p. 599*]

FROM SACRED RITUALS 599, to the infirm and especially those who reside in hospitals, may heavenly patrons be granted, those two luminaries of divine charity, who illuminated the Church with heroic and singular works of love. And this was indeed accomplished with such eagerness and alacrity that, from November 26, 1885, to May 15, 1886, more than 376 petitionary letters arrived at the Apostolic See, sent by 25 Roman Cardinals of the Holy Roman Church, by 62 Roman Archbishops in the name of, or for, the entire episcopate of their respective provinces, by 219 Roman Bishops expressing the wishes of many Chapters, and of certain cities, and furthermore by the Supreme Master of the Holy Land, by the Illustrious and Reverend Commander of the Order of the Holy Spirit in Saxony, by 9 Capitular Vicars, by 7 Abbots, by 25 Superiors General of regular orders, by the superiors of several large hospitals, and finally by 12 Superiors General of congregations dedicated to the ministry of the infirm in hospitals. With all of these things stated, and with the most wise and favorable vote, from

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the Eminent and Reverend Lord, Miecislaus, Cardinal of the Holy Roman Church, Ledóchowski, in the general assemblies of the Congregation of Sacred Rites held at the Vatican, on May 15, 1886, so that the matter might be discussed, whether the aforementioned saints, namely CAMILLUS DE LELLIS and JOHN OF GOD, should be declared to be the patrons of all Christian hospitals and of all the infirm, and whether their names should be inserted in the Litanies of the Dying; the Eminent and Reverend Fathers entrusted with the preservation of sacred rites, having thoroughly examined all matters, unanimously decided to write: "For the sake of both, and for the Eminent Pontiff, with the Promoter of the Faith, regarding the insertion in the Litanies." With this favorable resolution, two Apostolic documents were produced, which are here transcribed faithfully, word for word. DECREE OF THE URBAN AND ROME BISHOPS: Among all the virtues with which the Catholic Church shines, charity stands out as a prominent mark, by which the divine Founder himself wished his disciples to be recognized by all. Hence, wherever the Church has raised a sign throughout the lands, it has immediately happened that...

[*Latin ed. p. 600*]

600. In the observance of the sacred rites, solace is to be found, and particular care should be given to those who are burdened by infirmity, or who, having been overcome by illness, are about to complete the course of their mortal life. Furthermore, this most noble virtue has been exemplified by the renowned confessors, Saint Camillus de Lellis, and Saint John of God; who, inflamed by equal ardor of charity, did not hesitate to devote their lives to the health of the sick: for one, by offering comfort to the sick, both in body and soul, and by the aid of the sacred ministry, strengthened the souls of those struggling in their final agony; while the other, by offering medicine and every assistance to the bodies of the sick, more easily aided the salvation of their souls. And not only this: but these men of such great mercy founded congregations, or new families in the Church of Christ, in which their spirit of zeal burned unceasingly, and from which such fruits of charity constantly flowed for the benefit of the sick. However, in these unhappy times, unrighteous men, greedy for worldly glory, gathered together to destroy the religion, and, pretending to emulate the wonders of Christian charity, attacked it civilly, as they say, during the prevalence of the Asiatic plague; and while ostensibly offering aid to the sick, they often deprived the infirm of spiritual assistance. Therefore, a desire arose among the faithful, and especially among the sacred prelates, to recognize these Saints as patrons of all hospitals, and of all those who dwell among the sick, and to invoke them in the litanies of the dying. Therefore, when the Most Eminent and Reverend Lord Cardinal Miecislaus Ledóchowski reported these petitions for the canonization of Saints Camillus de Lellis and John of God, in a meeting of the Congregation of Sacred Rites, held at Vatican on

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the appointed day, the Most Eminent and Reverend Fathers, who preside over the preservation of the sacred rites, after mature deliberation, and having heard the opinion of the Reverend Father Augustine Caprara, promoter of the Holy Faith, decided as follows: "For the granting of the canonization of Saints Camillus de Lellis and John of God as patrons of all hospitals and of all those who dwell among the sick, and for the insertion of the names of Saint Camillus and Saint John of God in the litanies of the dying, after the name of Saint Francis." May 15, 1886. These matters were faithfully reported to His Holiness, Pope Leo XIII, through the undersigned Secretary, and His Holiness declared the decision of the Sacred Congregation to be valid in all respects.

[*Latin ed. p. 601*]

FROM SACRED RITUALS 601, AND IN ORDER THAT THIS BE PROPERLY IMPLEMENTED, APOSTOLIC LETTERS IN BRIEF FORM ARE ISSUED. ON THE 27TH DAY OF THE SAME MONTH AND YEAR. HIS EMINENCE CARDINAL BARTOLINIÜS, LOCUM TENENS OF THE HOLY ROMAN CHURCH, SIGNED. LAWRENCE SALVATI, SECRETARY OF THE HOLY ROMAN CHURCH. FROM THE SECRETARY'S OFFICE, APOSTOLIC LETTERS IN BRIEF FORM, WHEREBY THE MOST BLESSED CAMILLUS DE LELLIS AND JOHN OF GOD ARE DECLARED PATRONS OF HOSPITALS AND OF ALL THE SICK WHO RESIDE EVERYWHERE.

LEO XIII. FOR THE PERPETUAL REMEMBRANCE OF THE MATTER.

THE LORD, RICH IN MERCY, BY THE INFLUX OF THE HOLY SPIRIT, HAS RAISED UP MEN IN HIS CHURCH, WHO, BURNING WITH THE FIRE OF CHARITY, HAVING PUT ASIDE ALL THINGS, AND NOT DETERRED BY ANY DANGERS, NOR EVEN BY THE DISCRIMINATION OF LIFE ITSELF, HAVE SOUGHT FOR THEMSELVES A PARTICULAR PROVINCE, TO MINISTER TO THE VARIOUS AND DIVERSE NEEDS AND SORROWS OF THE HUMAN RACE.

AMONG THE MOST DISTINGUISHED OF THESE MEN ARE THE CONFESSORS OF CHRIST, CAMILLUS DE LELLIS AND JOHN OF GOD, WHO, EQUALLY CONSUMED BY CHARITY FOR THEIR NEIGHBOR, SPARED NO CARES, NO LABORS, AND WERE READY TO SACRIFICE THEIR VERY LIVES FOR THE HEALTH OF THE SICK AND FOR THEIR ETERNAL SALVATION; FOR ONE, MINISTERING TO THE SOULS OF THOSE IN THE AGONY OF DEATH, STRENGTHENING AND COMFORTING THEM WITH THE HELP OF THE SACRED MINISTRY; THE OTHER, PROVIDING A HOSPITAL AND MEDICINES FOR THE SICK, AND EQUALLY CARED FOR THE SALVATION OF THEIR SOULS; BOTH, WITH THEIR ASSOCIATES AND WITH THE LAWS THEY ESTABLISHED, WERE APPROVED BY THE APOSTOLIC

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SEE, AND FOUNDED A RELIGIOUS FAMILY, THE HEIR OF THEIR CHARITY, WHICH STILL EXISTS TO THIS DAY, AND WHICH, BY THE EXAMPLE OF ITS AUTHORS, HAS SHOWN FORTH, AT ALL TIMES, AND ESPECIALLY DURING TIMES OF EPIDEMICS AND PESTILENCE, SPLENDID TESTIMONIES OF CHARITY, EVEN THROUGH THE SACRIFICE OF THE LIVES OF ITS MEMBERS.

AND NOW, TRULY, THE ENEMY...

[*Latin ed. p. 602*]

602 FROM THE SECRETARY'S OFFICE, it is stated that, with doubled efforts, those who attack the Bride of Christ, namely the religious families of regular Orders, seek to undermine and utterly destroy their ornaments and defenses. Among the faithful, and especially among the sacred ministers, there has arisen a common desire to implore that both aforementioned confessors, namely, the heavenly patrons of all hospitals and of the sick everywhere, be declared and proclaimed by the authority of the Holy Apostolic See, and that they be invoked in the litanies of the dying, so that devotion to them may be increased, and the sick may have greater confidence in their patronage. When these requests were presented to the venerable Council of Our Brothers, the Cardinals of the Holy Roman Church, who are charged with safeguarding sacred rites, at a meeting held in Our houses at the Vatican, as is customary, the same venerable Council, after carefully considering all matters, and after hearing on this matter our beloved son, the Prelate who investigates matters of heavenly honors, responded: "Regarding the granting of the patronage of Saints Camillus de Lellis and John of God to all hospitals and to the sick everywhere, and the insertion of the names of the aforementioned Saints in the litanies of the dying, after the name of St. Francis." We approve and confirm the judgment of Our venerable Brothers, and by Our Apostolic authority, We establish and decree that Saints CAMILLUS DELELLIS and JOHN OF GOD be the heavenly patrons of all hospitals and of the sick everywhere, and We also decree that the names of the aforementioned Saints be inserted and invoked after the name of St. Francis in the litanies of the dying. Therefore, We decree that these Our letters be firm, valid, and efficacious, and that they shall have and obtain their full and complete effects, and that those to whom they pertain shall fully observe them. Contrary to this, let all things, even if specifically and individually mentioned, be of no consequence. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the twenty-second day of June, in the year 1886, in the ninth year of Our Pontificate. In place of the Signature. M. CARD. LEDOCHOWSKI.

[*Latin ed. p. 603*]

603 SUMMARY OF THE ACTIONS CONTAINED IN THIS VOLUME

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XVIII — LETTERS OF THE ROMAN PONTIFF. Letters from His Holiness Pope Leo XIII concerning the obedience incumbent upon writers with regard to religious matters and the action of the Church within the Catholic Society, page 3. Letters from the Most Reverend Archbishop of Paris, which provided the opportunity for writing the aforementioned Pontifical Letters. . . . » 9 Letters from His Eminence Cardinal Pitra to the Roman Pontiff Leo XIII, in which the Cardinal fully submits to the Pope's precepts. » 11 Encyclical Letter from His Holiness Pope Leo XIII concerning the Christian constitution of states. » 161 Letters from His Holiness Pope Leo XIII to the Emperor of Japan, in which he requests that the Emperor grant the greatest freedom to Christians; and that he continue to protect and favor Christian institutions. » 209 Encyclical Letters from His Holiness Pope Leo XIII, by which an extraordinary Jubilee is proclaimed. » 257 Letters from His Holiness Pope Leo XIII to the Bishops of Switzerland. » 262 Letters from His Holiness Pope Leo XIII to the Bishops of England, in which he congratulates them on their zeal in opening Christian schools, page 305. Letters from His Holiness Pope Leo XIII to the Most Reverend Superior General of the Order of the Friars Minor. » 307. Letters from His Holiness Pope Leo XIII to the Archbishops and Bishops of Prussia. » 387 Letters from His Holiness Pope Leo XIII to Prince Otto Bismarck, Chancellor of the German Empire, in which he is declared a knight of the Order of Military Merit. . . . » 417 Letters from Prince Bismarck to the Roman Pontiff Leo XIII, in which he expresses gratitude for the honor received. » 418 FROM THE HOLY CONGREGATION OF THE COUNCIL OF PARIS, concerning marriage; it is declared that no marriage is null in which the man, while contracting it, had the intention of contracting it only temporarily, even if he retained this intention in his mind. » 14 Concerning legates; a legate is absolved from the burden of Masses, because from the words of the testatrix, this burden is not clearly derived. . . . . 32 From Milan, concerning the breaking of the natural fast before Mass; the opinion of the archiepiscopal curia, in which it was declared that the priest—

[*Latin ed. p. 604*]

604 SUMMA. An actor was legally convicted of breaking the fast before Mass. p. 56. A canon, suffering from liver disease, is absent from the choir; but being fined by the Chapter, he appeals to the Holy See so that the fine may be declared unjust, and so that he may be granted an indulgence to avoid future lawsuits.

75 Veliterno, concerning elections; the invalid election of a capitular vicar and other capitular officials is declared null and void, in which case, in order to acquire a majority, one allegedly declared that he was converting the vote that he had given to another to himself.

97 Calatayeronen, concerning the care of souls and the opening of the altar; the sentence of the Curia is confirmed, which had decreed that the

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care of souls, both habitual and actual, belonged to the Colleges of Canons in the city of Maenor.

114 Piscien, concerning the deanship; it is resolved that the dignity of dean should be conferred upon the senior titular canon, because this office is to be provided from the funds diverted to the treasury.

124 Bierden, concerning canonical rights; it is determined, especially by custom, that a benefice is to be held in order to accompany the Most Holy Sacrament when it is brought to sick canons.

129 Caielana, concerning the deprivation of a parish; the sentence of the Curia is confirmed, by which a parish priest is deprived of his parish, unless he resigns his pastoral office and benefice within two months. p. 184.

193 Ilcinen, concerning sacred functions; it is resolved that a sodality cannot fulfill sacred functions, independently of the parish priest, through its own chaplain.

200 Mandelen, concerning the opening of the altar and a pension; it is determined that a pension must be paid, which the parish priest was unwilling to provide, citing excessive restraint of income.

205 Reatina, concerning marriage; the sentence of the diocesan Curia is confirmed, which declared a marriage null due to a prior impediment of public dishonor.

210 Arboren, concerning betrothals; a woman's appeal is denied from the sentence of the Curia, which declared that nothing had been established concerning betrothals.

219 Salernitana; it is denied that the purchaser of ecclesiastical property should maintain the right of patronage, but the right of patronage is granted by grace, with the added obligation of supplementing the expenses of worship and the fabric of the church.

225 Alben, concerning the service of the choir; grace is granted to extend the vacations of the choir from 3.5 days to 40 days without loss of distributions.

235 Pampilonen, concerning a petition regarding stipends for the execution of apostolic dispensations; it is resolved.

[*Latin ed. p. 605*]

SUMMARY OF DECREES: It is customary for something to be received for information and testimonies that precede prayers and dispensations. page 240. Concerning the nullity of marriages; it is determined that the impotence of a man must be demonstrated in order to declare a marriage null and void. page 242. Concerning parochial rights; it is resolved that the right to administer the sacraments to its canons, to carry their bodies to the Cathedral, and from there to the cemetery, belongs to the Cathedral chapter, independently of the parish priest in whose parish they die. page 264. Concerning the penalty for the absence of canons; a canon who is

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illegally absent must be fined not in proportion to the time of his absence, but in half of the fruits of the entire year. page 275. Concerning the solution regarding pensions; it is asked whether a pension and subsidy should be paid to a parish priest who had requested to go to America with the consent of the Bishop, and who, having been recalled by the successor of the same Bishop, refused to return to the diocese. page 282. Concerning the right of election; it is resolved that the right of election of a parish priest belongs to the chapter, even if it had elected a less suitable candidate in a previous election. page 288. Concerning distributions; the Bishop inquired whether the custom could be maintained whereby chapter members who are unable to attend extraordinary functions due to infirmity are admitted to participate. page 292. Of Saint James of Cuba; concerning the power of the Bishops of the Cuban province to have a voice and a decisive vote in the chapter; this power is extended to the Bishops of Cuba, which had been granted to the Bishops of Spain by the Concordat with the Apostolic See. page 294. Of Theatine; concerning the dispensation for a cleric of Theatine to complete his studies in the Lancian seminary. page 296. Of SÃ©ez; concerning the dismemberment of a parish and its erection; the Bishop of SÃ©ez is granted the faculty to erect a new parish and to define the boundaries of parishes. page 315. Of Montisalti; concerning the right of nomination; it is resolved that the right to nominate for a benefice, which a priest obtained from the Holy See, belongs to the confraternity, as it devolved upon it, while the confraternity acted to redeem the dowry from a defaulting party. page 324. Concerning the right to inquire, to wear the stole, and to elevate the cross; it is inquired whether a confraternity can collect alms in another parish; and whether a parish priest can elevate his own cross in processions that take place within the limits of another parish. page 395. Concerning Melevitana dowry subsidies; a young woman is granted the enjoyment of a dowry legacy before she enters into marriage. page 407. Of Olinden; concerning a dispensation for marriage.

[*Latin ed. p. 606*]

SUMMA ACTORUM 606 requires that a man be permitted to enter into other marriages, page 409. In Namur, an indulgence; permission is granted to be absent from the choir, except on Sundays and feast days. ” 446 Segovia. concerning elections; it is decided that the election of canons to fill an office must be completed by votes that are both relatively and absolutely the majority. ” 449 Avignon and Valencia, concerning the transfer of a pension; it is asked whether one should stand by or recede from a resolution, previously given, regarding the transfer of a pension for the support of a young man in the Seminary. ” 451 Arimino. concerning funeral expenses; it is confirmed by custom that half of the funeral expenses are paid to the parish priest of the church where the burial takes place. ” 455 Cephalo, concerning the provision of a parish; the question is whether the collation of a parish,

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made after a competition, by a Bishop in favor of a priest, is valid, when by a papal bull another priest, recommended by the same Bishop, was being appointed. " 465 Bergamo, concerning the settlement of debts; it is asked whether the heirs of a deceased Bishop, or the successor in the Bishopric, are obligated to pay a debt, contracted by the predecessor for the construction of a church. " 473 Como, concerning the nullity of a marriage; it is debated whether the nullity of a marriage can be established due to the vice of secrecy. " 483 Arborea. concerning distributions and emoluments; it is granted to a jubilarian that he may also receive certain extraordinary distributions, page 493. Bisignano, concerning the sharing of emoluments; it is asked whether parish priests can participate in the canonical quotas that are paid by the government to the chapter. " 495 Theatine, concerning excardination; it was decided that dismissal letters should be granted, if the circumstances warrant. " 502 Boiano and Thermara, concerning excardination; it was considered by the Most Reverend Fathers that there are reasons to grant the requested excardination. " 504 Bosa. concerning a dispensation from the impediment of betrothal; a dispensation is granted from the impediments to betrothal, with prior compensation to the injured party. " 506 Ortona. concerning the option and execution of a rescript; the question is whether the option made by the canons is valid, before the apostolic rescript was issued, by which the desired office had already been united to the canon's office. " 519 Nullius, concerning the canonical insignia; it is decided that nothing should be changed regarding the canonical insignia, which the Bishop had considered to be used in a way that was not legitimate, and which required correction. " 528 Lycia. concerning patronage; the episcopal decision is confirmed, which decreed that no one should enjoy the right of patronage in a church, if a family had purchased a house from the patron, adjacent to the church, with the use of patronage. " 531

[*Latin ed. p. 607*]

SUMMA ACTORUM 607. Concerning the faculty of granting indulgences in Aprutina; the parish priest is granted the faculty of granting indulgences and receiving a small pension. The Bishop, for the inconvenience suffered, renounces the pension, which is to be used for a "missa litandarum."

544. Concerning Brunelli of Montis Regalis, regarding the reduction of the burdens of his nephew, a priest.

83. Concerning masses and absolutions; regarding the deposit of money for the benefit of the consolidated parish and for indulgences; it is inquired whether absolution and the liberation of burdens, obtained from the Apostolic See, should be granted to Religious who have cared for the poor, or whether the faculty should be denied to the Most Reverend Ordinary who has already made arrangements for the same in favor of a pious cause.

87. Concerning Pistorien, regarding the renunciation and removal of a

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canon from a parish; it is accepted that, with a suitable pension, the renunciation of the parish by the canon, issued by the pastor, is valid; it is inquired about the manner in which directors should value the canonry and its fruits, especially concerning a vineyard occupied by the Municipality of Rome.

136. Concerning Pinnen, regarding the right of institution; it is inquired whether the Archdeacon of Pisanello has the right of institution. Permission is granted for previous omissions, and it is permitted that in the future, masses be recited with double alms for the preparation of parish priests in Colliscorbini.

571. Concerning Oritana, regarding elections or nominations; there is doubt about an election made by the Bishop, which is not considered valid by some canons regarding honors.

585. Concerning Theatin, or Vasten, regarding the right of nominating parish coadjutors; between the Chapter and the Cathedral Church, a question arises concerning the habitual care and the right of electing parish coadjutors.

148. Concerning Melevitana, regarding the commutation of burdens; the commutation of burdens is denied.

594. Concerning Hieracen, regarding the erection of a parish; the dismemberment and erection of a new parish are conceded, provided that the legal reasons exist.

596. Concerning Sublacen, regarding parochial rights; it is inquired whether the causes are present by which it is permissible to subtract from the divine cult of the Church.

[*Latin ed. p. 608*]

SUMMARY OF ACTS 608: A sodality of Saint Mary can be established independently of the parish priest, and it can perform non-parochial functions; and, with the permission of the Ordinary, it can expose the Blessed Sacrament for forty hours. . . . . 298: Ruiz, of the Order of the Observant Minor Friars, and seven members. » 420: Neapolitan: Concerning the beatification and canonization of the venerable Servant of God, Francis Mary Castelli, a professed cleric of the Congregation of Regular Clerks of Saint Paul [Barnabites]. » 463: Apostolic documents concerning the patrons of hospitals and the sick. . . . » 598: FROM THE SACRED CONGREGATION OF RITES: Sulmona. Concerning two churches which have been raised to the dignity of a collegiate church by the Apostolic See, it is decreed that they have the right of precedence in sacred functions, according to which one received such honor first. . . . . » 3: Decree by which Saint Vincent de Paul is declared the patron of all societies of charity. . . . » 4: Decree of the City and the World: By which it is commanded that the most holy Rosary be recited in parish churches throughout the month of October of

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any year, until the Holy Father obtains freedom. » 95: Brussels, or Mechlin: Concerning the beatification and canonization of the venerable Servant of God, Sister Anne of Jesus, a professed religious of the Discalced Carmelite Order, and the foundress of monasteries of that Order in Belgium. » 341: Brescia: Concerning the beatification and canonization of the venerable Servant of God, Alexander Luciaghi, a citizen of Brescia. » 415: Decree. Damascus: Concerning the beatification or declaration of martyrdom of the venerable Servants of God, Brothers Emmanuel. FROM THE SACRED CONGREGATION OF BRIEF: Letters from His Holiness Leo XIII, in the form of a Brief, by which Saint Vincent de Paul is declared the patron of all societies of charity. » 45: FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION: Circular Letters; by which, henceforth, valid dispensations for marriage are declared, even if incestuous consanguinity was concealed. » 207: Doubts proposed by the Archbishop, the apostolic administrator of the Diocese of Mantua. . . . » 343: Instruction to the Patriarchs, Archbishops, and Bishops of the Eastern Rites, to be used in matrimonial cases, approved in the general Congregation of the Most Reverend Fathers and Religious Inquisitors General. . . . » 344: Circular Letters to the Ordinaries of the places, containing an authentic declaration regarding the compelling of lay judges to act.

[*Latin ed. p. 609*]

SUMMA of Acts presented before its tribunal, concerning ecclesiastical persons under the jurisdiction of the Apostolic See... p. 416 Decree concerning the validity of marriages, when there is doubt whether two non-Catholics, or whether either one of them, has been baptized. » 460 From the HOLY CONGREGATION OF INDULGENCES: A question concerning privileged altars, proposed by the General of the Prémontré Order... » 4 8 Prayer with an indulgence of three hundred days, dedicated to St. Joseph, as patron of the Catholic Church. » 90 Laus (hymn) in honor of Christ Jesus and the Virgin Mary, with an indulgence of one hundred days... » 92 Oria; a question concerning the vestments to be worn by a priest in order to obtain a plenary indulgence from a privileged altar. » 94 Piacenza; a question concerning the formula to be used by Bishops in granting the apostolic blessing with a plenary indulgence. » 158 Of the City and the World, concerning the act of heroic charity towards souls detained in Purgatory. » 337 Decree, concerning the Third Secular Order of St. Francis of Assisi. » 339 Vienna (in Austria), concerning the approval of an indulgence for a privileged altar. » 340 Rescript by which an indulgence of one hundred days is granted to the faithful who use a special formula of right intention. » 411 Of the City and the World, concerning the Act of Contrition, Volume Z, Part V, Chapter C, Paragraph XVI, 609, to be performed each week in order to obtain plenary indulgences. p. 412 Oran; concerning the formula to be presented for general absolutions, and for blessings with a plenary indulgence. » 413 Of

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several regions subject to the HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH; concerning the plenary indulgence attached to the apostolic blessing at the point of death. » 414 Lausanne and Geneva; concerning certain general conditions for the granting of indulgences. » 462 Decree of the City and the World; an indulgence of three hundred days is granted to those who recite the Litany of the Holy Name of Jesus, as is appended to the present decree. » 509 FROM THE ACTS OF THE CONSISTORY: Concerning the Consistory held on July 27th and 30th, 1885. » 49 Concerning the Consistory held on January 15th, 1886. » 309 Secret Consistory held on June 7th, 1886. » 513 Concerning the Consistory held on June 10th, 1886. » 561 FROM THE HOLY CONGREGATION OF THE INDEX: Decree by which several books are prohibited. » 159 Decree by which a book is prohibited. » 342 Decree by which a book is prohibited. » 464 FROM THE HOLY PENITENTIARY: Declarations for the jubilee year, 1886. » 333 39

[*Latin ed. p. 610*]

610 *Summa* of Doubts and Answers concerning Saint Joseph, number 512. *Ex Sacro Concilio de Propaganda Fide*, Instruction concerning ecclesiastical judgments in matters of marriage. 369 *Ex Aedibus Vaticanis*, Letters from the Eminence, the Secretary of State, to Monsignor De Monts, the envoy of Prussia at the Holy See... page 556. Letters from the same Secretary to Monsignor Schlozer, the envoy of Prussia at the Holy See. 559.

[*Latin ed. p. 611*]

611 GENERAL INDEX OF CONCLUSIONS WHICH HAVE BEEN NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBJECT MATTER OF WHICH IS AMPLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are contained under the following words:

Apertion of mouths (Aperitio oris)
Appeal (Appellatio)
Canons
Cardinals, concerning pensions
Cleric, concubinarius (living in concubinage)
Collegiate church
Confraternity
Custom
Dismemberment of a parish
Dispensation, concerning execution
Marriage
Domicile

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Masses, concerning reduction
Election
Parish priest
Emphyteusis
Pension
Bishop, concerning his prebend
Pope, concerning benefices
Precedence
Religious, concerning vows
Judgment
Betrothal
Patronage
Vicar, curatus (pastor)

Apertion of mouths (Aperitio oris): An apertion of mouths is usually granted only for a very important reason, and with an exorbitant injury, which the grace inflicts upon a third party, page 44. An apertion of mouths is permissible whenever it is established that there has been theft or deceit; or whenever apostolic letters have been obtained through fraud and lies; especially if, through them, a right has been unjustly taken away from someone, page 333. Against apostolic letters, an apertion of mouths must be granted if it is established that the same are infected with the vice of theft and deceit: because they tacitly contain the condition that if prayers are based on truth, page 473. With the placing of the hand by the Supreme Pontiff, concerning a benefice, no one can dispose of it for that time, unless the Pope has not been induced to place his hand based on false statements; for if the cause is false, the effect does not result, ibid.

Appeal (Appellatio): According to common law and practice, within thirty days from the day the appeal is interposed against a judge, an appeal must be requested from the judge by the one who is appealing; and the judge from whom the appeal is made must grant this request within the aforementioned time, so that the apostles may be presented to the judge to whom the appeal is directed, page 224. A definitive sentence passes into a judged matter, even if an appeal has been made within the due time; however, if the appeal is later abandoned, ibid.

Canons: According to common law, under the name of "antiquior," the canon is understood to be the titular canon, not the honorary one who has served longer.

[*Latin ed. p. 612*]

INDEX GENERALIS 612, or he who, before others, would transmit the benefit of the law, who has been co-opted as a canon of the Trons. p. 128. The number of months of absence permitted is indicated, ibid. When hon-

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ors and privileges are granted because of duties and services rendered, it is more fitting that he who has served longer should receive remuneration before other canons, regardless of seniority in the stall, whether due to legal precedence or otherwise. ibid. Cardinals, concerning pensions, are permitted, by virtue of the apostolic constitutions and by a recent brief, to transfer the pension which they enjoy to their relatives, p. 86. The effect of such a transfer continues even after the death of the deceased Cardinal, if a lifetime transfer of the pension has been made, notwithstanding civil law, otherwise it is disposed of, p. 87. p. 282. The maintenance in the pension, once granted, cannot be denied for any reason, nor can it be delayed or hindered under any pretext of asserted nullity, ibid. The obligation of denunciation, prescribed by civil law, rests not upon the pensioner, but upon him who is obligated to provide the pension, ibid. The decree applies to the most recent cases in which these matters are decided, without any regard for the inadequacy of the pension, whatever extreme circumstances may be present, as established by the very decree, ibid. The matter is more complicated if it is admitted that the penalty is to be paid for a period of time: because canons who have been concubinars are subject to penalties, not only those who publicly live with a woman in a scandalous manner, but...

[*Latin ed. p. 613*]

INDEX G "Etiam qui in notoria suspicione concubinati existunt: etenim haec crimina in latere coniiciuntur, et ideo, indiciis plus minusve remotis, plerumque probari possunt. 193. Quamobrem, si deferente fama, probari possit per indicia et praesumptiones suspicio notoria incontinentiae vel concubinati, probatio haec locum tenet iuridicae probationis in eiusmodi materia in qua probationes tantum praesumptivae plerumque haberi possunt, ibid. Conversatio vero cum femina suscepta clam, privatim, saepius horis nocturnis, ingerit praesumptionem gravissimam iuris, de concubinatu. ibid. Episcopos sine strepitu et figura iudicii, sed sola facti veritate inspecta, procedere posse contra clericos, animarum curam habentes, ex Doctoribus patere et ex Tridentino Sess. 21, cap. 6 de ref., a quo praecipitur expeditius contra praefatos agendum esse, ad citius compescenda crimina et scandala quae graviora censentur in Christifidelium pastoribus, turpem degentibus vitam. ibid. Collegiata Ecclesia ad honorem Collegiatae haud elevari potest sola auctoritate Episcopi; et nisi intercedat auctoritas Pontificis, nulliter agitur, p. 124. Confraternitas Indubium est ex decreto generali Urbis et Orbis quod Confraternitates erectae in Capellis tum publicis, tum privatis, adnexis parochialibus Ecclesiis et ab eis dependentibus, habent dependentiam a Parocho in explendis functionibus ecclesiasticis, non parochialibus. pag. 200. Confraternitates laicorum a parocho in explendis functionibus ecclesiasticis dependentiam habent, quae vel in Ecclesiis parochialibus vel parochialibus adnexis erectae sunt: eae vero, quae in

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aliis Ecclesiis publicis erectae reperiuntur, nullam a Parocho, quoad easdem functiones, dependentiam habent, pag. 304. Expositio quadraginta horarum, et benedictio quae fit super populo non sunt de iuribus mere parochialibus; ideoque a sodalitatibus expleri possunt, quae in Ecclesiis a parochialibus dissitis vel disiunctis erectae reperiuntur, ibid. Sodalitates aggregatae indulgentiis et privilegiis Archiconfraternitatis aggregantis gaudent, ibid. Christifidelibus cum capitulis, congregationibus, confraternitatibus, collegiis nec non cum proprio parocho aut sacerdote, ab eo deputato, ecclesias pro lucrando iubilaeo processionaliter visitantibus, applicari potest ab Ordinariis indultum in litteris apostolicis eisdem, capitulis, congregationibus, etc. concessum, pag. 333. Ex iure indultum est ministris et officialibus confraternitatum excipiendi oblata subsidia christianae."

[*Latin ed. p. 614*]

INDEX GENERALIS 614. Concerning charity, the question of fact is according to its mode and form; and therefore, it must be resolved by the Ordinary of the place, prescribing what is to be done, based on the particular quality and individual circumstances of each case, page 407. Tradition. The erection of a new parish, by considering tradition, seeks to exhibit a title of a better world, which in these matters is the supreme law and end, which precedes the law and the end, as is the case with the appointment of chaplains or vicars; page 136. The title – derived from tradition – because the parish priest, as the spouse of his Church and the father of his flock, with greater zeal and charity, seeks the salvation of the parishioners, according to the common law and customs; page 323. For the erection of a new parish, the title taken from the people's long-standing custom is not strictly and absolutely required; but sometimes it is sufficient that it has been established for the better satisfaction and convenience of the people, and also for the sake of worship and the decorum of the sacraments; page 136. Tradition, which is unchangeable, can be maintained, by which canonical celebrations, or jubilees, can enjoy all ordinary and extraordinary benefits. A dispensation regarding the execution of something, insofar as it is hindered by illness or the death of parents, does not prevent the interest of the grantor or founder from being considered, page 294. Anyone who has a tradition in their favor for an unchangeable title of a better world can allege it; that is, they can allege in their favor whatever privilege or special apostolic title with derogatory clauses; page 406. Acts completed before obtaining a dispensation do not fall under the law, which regulates the actions of the executor; because then the Bishop does not act as the executor of the dispensation, but the law directly regards the executor of the letters. From some Doctors, the division of a parish and the erection of

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a new Church.

[*Latin ed. p. 615*]

INDEX: Stolicarum; and it cannot be extended from case to case in odious matters, because hatreds must be restrained, ibid. The proper residence is that of the parish priest of the residence, page 493. Residence is considered to be in that place where one has established his home, and the sum of his possessions and fortunes, from which he would not depart, if nothing called him away, and from which, when he seems to set out on a journey, ibid. The residence of the children of a family is considered to be in the place where the father of the family has his home, ibid. "GERERALIS 615 supports; for the same man would, in one and the same act, perform a different and opposite role, p. 113. To cast votes for oneself is the height of ambition, which must be avoided by the ministers of the Church; if Gregory M. desires a position of leadership, it must be denied to him; if he is fleeing, it must be offered to him, ibid. By law, there is no election in the case of an equal number of votes; therefore, he who has obtained half of the votes, by turning the vote back upon himself, would truly be electing himself, and would not be able to escape the mark of ambition, by determining the majority in his favor, Disposition ibid. chapter: When, in law, it is presumed that one intends to remain for the greater part of the year, it is more clearly explained if it is restricted to that case in which the Chapter seemed to have compromised itself in one matter, namely, that one who was called by half of the electors and elected would evade, provided he consents; but by consenting, he does not increase the votes, but sets a condition that he be accepted by all, ibid. It differs from residence in this, that in residence, the intention is to remain permanently; in this, the intention is to remain for the greater part of the year, ibid. ibid. Vagrants are called those who have no true residence anywhere, and no fixed abode, or who, having abandoned their residence, seek another, ibid. This restriction is reasonable only for that single case of election. Its extension to every case of election, in which an equality of votes is verified, seems to violate the common law, and to encourage the stimulus of ambition, ibid. The nature of election is violated by him who, in order to obtain a majority, seeks to ibid. Extensions from case to case in these matters which cannot be made beyond the common law, even if there is an identity of reason: for from rule 79.

[*Latin ed. p. 616*]

INDEX GENERALIS 616 iur. in VI « quae exorbitant a iuPro determinando vero huiusmodi re communi nequaquam ad conse- schedarum valore attendendum est quentiam, sunt trahenda ». ibid. ad tempus, quo consolidatum acquiEtsi electio Vicarii capitularis ca- situm fuit, et ad eius normam comdere non videatur sub praescriptio- mensurandi sunt fructus, qui done Capitis Quia propter, quia non mino directo

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debentur, ibid. est beneficium, atque pro ea nihil Emphytheuta semper devincitur disponat Tridentinum; tamen ex vinculo solvendi domino directo iurisprudentia S. C. C. certum vi- canonem et hunc a qualibet dimidetur quod electio haec fieri. de- nutione immunem; et tunc solum beat per secreta suffragia ». ibid. liberatur, cum res emphytheutica Electio Vicarii capitularis alio- funditus perierit, ibid. rumque officiorum capitularium „ Laudemium, a laudando dictum, per secreta vota expleta, invalida debetur domino directo ad rationem fit, quando ob votorum paritatem duorum scutorum pro quolibet cenfavore duorum , ex his alter ad tenario, quoties res emphytheutica maioritatem sibi conciliandam, pro- in alterius dominium transierit, prium suffragium, alteri collatum, sive libere, sive coacte huiusmodi in seipsum convertere declaret. transitus fiat. ibid. pag. 114. Emph.ytheu.sis Episcopus quoad suam praebendam Ad affrancalionem fundi emphytheutici procedi non potest sine consensu interesse habentium, pag. 143. Standum est dispositioni S. Congregationis Episcop. et Regul. si fundus redimendus ad causam piam conservatam pertinet. Ideoque pretium affrancationis statuendum est ad rationem centum pro singulis quatuor libellis annuis canonis, ib. Et quidquid minus impensum fuit pro acquisitione schedarum vulgo - di consolidato - collocandum est in tuto, licito et fructifero investimento favore domini directi, ibid. Successores in beneficio tenentur ad solutionem debitorum pro Ecclesiae utilitate contractorum ab antecessore; eo quod beneficiarius pro tempore nil aliud sit quam administrator ecclesiae sibi concreditae. pag. 482. Episcopatum esse verum beneficium eruitur ex quamplurimis doctoribus et ex ipsa S. C. Congregatione, ibid. Agens pro suo munere in bonum et utilitatem societatis, cui praeest, non tenetur ad impensas de proprio, sed tenetur ipsa societas, ib. Agens nomine universitatis, assimilatur procuratori misso a quadam

The election of a capitular vicar, and other offices of the chapter, "Laudemium, so called for praising," filled by secret votes, is invalid, when, due to the equality of votes of two, with two favoring, one of whom, in order to gain a majority for himself, declares that the vote given to the other, whether freely or by force, is to be turned back to himself. ibid. page 114.

Regarding the granting of interest, the bishop cannot proceed with the emancipation of an emphyteutic property without the consent of those who have an interest, page 143. It is necessary to follow the disposition of the Holy Congregation of Bishops and Regulations, if the property is to be redeemed for a pious cause. Therefore, the price of emancipation must be determined in the ratio of one hundred for each four annual canons, ibid. And whatever was spent less for the acquisition of the bonds, commonly called "di consolidato," must be placed in a safe, lawful, and profitable investment for the benefit of the direct lord, ibid.

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Successors in a benefice are bound to pay the debts contracted for the benefit of the Church by their predecessor; because the beneficiary, for the time being, is nothing other than an administrator of the Church entrusted to him. page 482.

The episcopate is a true benefice, as affirmed by many doctors and by the Holy Congregation itself, ibid.

He who acts in his office for the good and benefit of the society to which he belongs, is not bound to incur expenses from his own resources, but the society itself is bound, ibid.

He who acts in the name of the university, is assimilated to a procurator sent by some.

[*Latin ed. p. 617*]

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C. A person, when dealing with his own affairs, ibid. Administrators cannot be convened in their own name regarding matters undertaken in the name of administration or procuratorship; and because the obligation arising from the administrator's action remains only with the principal, as if he himself had conducted the business. ibid. The Triplex Institution is given as consisting of three species of institution, namely, the corporal or the granting of possession; the authorizable, that is, the approval for the care of souls; and the collative, which is a species intermediate between the corporal and the authorizable, and is not sufficiently distinguished from the latter, page 584. It is deduced from chapter 7 concerning the Office of Archdeacons that the first species of institution, namely the corporal, was formerly included among the privileges of Cathedral Archdeacons, but not the authorizable or collative institution; canonists teach that these, by common law, pertain only to Bishops, ibid. Although, by common law, the collative or authorizable institution of a benefice pertains to Bishops; it is not excluded that it can be acquired by others, by Bishops of lower rank, either through a collated privilege, or through custom or prescription, ibid. When Bishops have a well-founded intention in law regarding collation and institution of benefices, another cannot claim this right unless he clearly proves that it belongs to him by some just title, namely, by a privilege, or by prescription and custom already established, ibid. Now, it is certain that almost all the rights, privileges, and power of Archdeacons have lapsed and are neglected, except for the office of attending the Bishop, and for general ordinations, page 585. Judgment. Delegate judges can refuse to hear a case, not for the sake of the general body of causes, but for the sake of a particular judgment, even without knowledge of the cause, in order to achieve greater freedom and equity in judgments, page 74. Sometimes they inflict a more serious injury than those that are contrary to law, because order affects substance, ibid. A general inquiry must always precede a special one: that is, the judge must gather the arguments of the crime, and he is compelled

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by the notoriety of the fact to take notice, ibid. For a special inquiry to be instituted, the most certain proofs are required, and such that nothing seems to be lacking except the confession of the accused. ibid. Although it is always free for Bishops to grant a faculty, it is not equally free for them to take away that faculty. For no one should injure another.

[*Latin ed. p. 618*]

INDEX GENERALIS 618: *privandus* (one who is to be deprived of ecclesiastical privileges). And in every matter concerning patronage, the judgment of a good man is always required, ibid. Patronage acquired by agreement with a purchaser of funds, against a priest, requires more than two witnesses; it is not acquired if the seller, because of his misdeeds against the Church, and especially because of the usurpation of Church property, is not a suitable witness, page 235. Even if he appears to be acting or behaving properly, he cannot be considered a reliable witness in a judicial matter. Nor can a layperson be admitted as a witness in a case against a priest. Patronage is not acquired by the purchaser because of the vice of simony, if it was principally and specifically included in the contract, ibid. However, the flaw of simony is evident if the just price of the funds was not paid, even if in the first place mention is made of patronage in the instrument, ibid. Captivating positions, so formulated that the accused can scarcely respond, and which in some way harm him, are strongly disapproved of, page 75. To condemn a person, and especially a priest, the following conditions are required, which, if present, should not give rise to any doubt, ibid. Good faith is presumed in the one who has protested to the Tribunal, after the proceedings and the dispute of the cause, that he has purchased Church property, and in the meantime, if necessity compels, he may rescind the agreement, ibid. Ecclesiastical patrons are deprived of the further right of nomination if they have presented an unworthy candidate for the benefice, and in such a case, the power to freely confer the benefice devolves to the Ordinary, page 291. Otherwise, the situation is different.

[*Latin ed. p. 619*]

INDEX (Quando electores, per inculpabile ignorantium, praesentent aliquem indignum; tum enim, presentatione a superiore ecclesiastico reiecta, novum habent semestre ad alium praesentandum, ibidem). Pristina dote manente, ius patronatus acquiri potest ex simplici restauratione, seu reäedificatione Ecclesiae, dummodo constet illam fuisse funditus dirutam, vel saltem reperiri in tali statu, ut nova constructione egeret, pagina 304. Omnia per praescriptionem acquiri possunt, quae longo tempore acquiri specialiter non prohibentur, ibidem. Cum ius habendi fenestras in Ecclesiis dicere non possit ius honorificum, sed potius habendum sit *ceu servitus Ecclesiae*, ideo ius eiusmodi acquiri nequit in loco sacro sine legitimo titulo, pagina 543. Apostolicum tantum indultum

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legitimum praebet titulum ad hanc Ecclesiae imponendam servitutem; quia sacrae Congregationes romanae et doctores saepe saepius innuunt non licere privatis personis habere ac retinere fenestras prospicientes in Ecclesiis, habitationi contiguis, ibidem. Et quamvis patroni per longam consuetudinem iure uti fuerint, tamen ius non acquirunt et abusive servitutem Ecclesiae imponunt, quia ius hoc speciali indulto conceditur personae ab Apostolica Sede, neque comprehenditur inter iura honorifica concessa patronis, ibidem. NERALIS 619 Privilegium meretur amittere qui permissa sibi potestate abutitur; quando nempe ex hoc privilegio occasio gignitur ad peccandum et ad scandala facienda, ibidem. Matrimonium: Ex receptioribus auctoribus apud Sánchez de matrim. 1. 2 disp. 42 docetur, fidem adhibendam affirmani se ficte matrimonio consensisse, quoties ex adiunctis certitudo moralis de veritate huius assertionis valeat induci, pagina 31. Requiritur enim ea certitudo quae virum prudentem moraliter certum faciat de ficto consensu alterius; quum vero haec ius non definierit, nulla certior regula praescribi potest, quam ut ea sit quae virum prudentem redderet certum attentis occurrentibus circumstantiis, ibidem. Ad matrimonii validitatem requiritur contrahentium consensus externus et internus; hinc, minime existere potest matrimonium per simulatum consensum, etsi expressum externe verbis et signis, ibidem. Ex doctoribus ad inficiendum matrimonium vitio nullitatis sufficit intentio bono matrimonii contraria, simpliciter in mente retenta ab uno ex contrahentibus etiam si non fuerit deducta in expressam conditionem, quia haec intentio repugnat matrimonii substantiae, ibidem. Hinc iuxta hanc sententiam, nul-

[*Latin ed. p. 620*]

INDEX GENERALIS 620. He who contracts marriage, when it appears that no one intended that the girl should marry him, even though he is the kinsman of the woman to whom he is betrothed, having promised marriage for a time due to some relationship; for this intention is such that it both affects and appears to be an affinity, which is contrary to the good of the sacrament. When the betrothed contracts marriage with the betrothed woman, the bond is, by its very nature, perpetual, even with illegitimate relatives, ibid. The impediment to public decency arising from betrothals is not removed, even if the betrothed are validly betrothed, and the marriage does not take place, unless they mutually consent to dissolve the betrothal, or one of the betrothed dies; because before the dissolution, the betrothal was valid, and from it arose an impediment, which is not subject to the will of the betrothed, but is moderated by the laws of the canons, ibid. To obtain the grace of a dispensation, two things are required: namely, that the marriage is considered valid and not consummated, and that there are sufficient reasons, page 253. Regarding the impediment to marriage of public decency, which arises from valid betrothals of the future, it removes

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the impediment only up to the first degree of consanguinity between the betrothed and the betrothed woman, page 218. Indeed, to prove it, the sworn confession of the spouses, connected with the seventh degree of relatives, is sufficient, even without a physical examination, as was sufficient under the old law, ibid. The cause for granting the dispensation must be serious when one of the spouses requests it, while the other resists; but no cause, or at least a less serious one, is admitted, provided it is not incongruous, when both spouses desire the dissolution, ibid. Under both the old and the new law, the impediment to public decency has been established up to the most recent times: for dishonor and indecency are to be considered, ibid.

[*Latin ed. p. 621*]

It is commonly taught by doctors that probable impotence, and even more so, certain and evident impotence in itself, is sufficient to obtain a dispensation. This is especially true if aversion, or fear and danger of fornication, is present, with the risk of the ruin of the soul of one or both spouses.

Concerning marriages that are invalid because they were contracted before a priest who is not the proper pastor, such marriages are invalid in places where the Council of Trent was promulgated, page 492. The proper pastor is the pastor of the domicile, page 493. A remedy at the root is not presumed; rather, it has no effect unless at least presumed consent is given through marital intercourse. Furthermore, the duration of intercourse does not remove the incurable defect of the form.

Regarding the reduction of Masses, a reduction, although odious in law, is often granted by the Supreme Pontiff for legitimate reasons. Such reasons, according to the teaching of Benedict XIV, consist in a decrease in income, or in increased alms given by Bishops in Synods, page 147. However, the reduction of Masses must not be demonstrated by beginning with the removal of the burden and then assigning a sum, but must be left expressly stated, either as NERALIS 621, or as a disposition beginning with the assignment of a sum and then adding the burden. Page 148.

Absolution for past omissions is granted if pious works have not been fulfilled without fault, and if there is no longer an opportunity to fulfill them. However, if fault or negligence is present, absolution is granted with the addition of a penance, such as celebrating one Mass, or some other light burden, for the sake of the grace of absolution and forgiveness.

Regarding parishes, resignation from a parish is not permitted by law unless it is clear that the person resigning can live comfortably elsewhere; otherwise, the resignation is invalid, page 204. In this matter, the judgment regarding papal decrees, through which pensions are reserved for those who resign from a parish, is very difficult. However, if there is a just and laudable reason, the power of judgment is granted, as would be the case with pensions if it had been stated to the Pontiff that the benefice was very rich, while in reality it was very poor, page 205.

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Parish priests have a well-founded intention and legal assistance over others within the limits of their own parish, regarding the exercise of parochial rights; among these, the right to administer the sacraments to the dying is most strongly included, as well as the right to remove their bodies and to bring them to burial, page 274.

[*Latin ed. p. 622*]

§ 22. However, the right to receive a pension is lost by a cleric who, by prescription and by resigning the benefice, acts contrary to custom and legitimately; and it is certain that, by those crimes by which benefices are lost, the right loses its power to compel, so that, whenever custom, with its due requirements, can be opposed, it is lost; it is also certain that the absence of a pensioner from the Diocese does not constitute a cause by which the pension is terminated.

A cathedral canon, according to some doctors, who resides in a different parish, is not a parishioner of that particular church, but of the cathedral; because ecclesiastical jurisprudence holds that a person remains obligated to his parish wherever he may reside; and because the cathedral is the immediate parish of the chapter.

The practice of the Holy Congregations is that from the erection of public benefices or privileges, or from expedited procedures, no crime is incurred, nor are any privileges or rights previously acquired lost, unless something else prevents it, p. 528.

It is customary for the Pope sometimes to order that a benefice be transferred to someone, or that two people be joined together so that one of them cannot, in any way, attend the parish priest because of the distance of the places, p. 547.

Provisions made by those who have the right to confer benefices are nullified, even if they were made by someone who had previously made such a provision, ibid.

The formula, added at the discretion and conscience of the Bishop, which is included in pontifical rescripts, does not carry with it the force of execution on the part of the Bishop, as many teach, ibid.

A pension, which takes the place of sustenance, is granted either at the place of the benefice, so that someone may more easily be supported, or because of the resignation, and then it is considered as a substitute for sustenance, p. 287.

The pension, which takes the place of sustenance, is considered to be a favor to the petitioner, whenever the executor is necessary to carry out the favor, and having learned the truth of the matter, ibid.

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The Roman Pontiff, for a just cause,

[*Latin ed. p. 623*]

INDEX (regarding the goods of the deceased, whatever is judged necessary or useful for the proper governance of the Church, page 553. In controversies concerning privileges, the rule that holds the greatest weight is that the earlier in time, the more valid in law. page 44. The change of title and status of a Church, according to canonical practice, effects the extinction of the old Church and the erection of a new one, ibid. Therefore, the right of precedence between two Churches, regarding equal honors, seems to be derived from the time when, by Apostolic authority, the status and title of both were changed, ibid. A religious, with regard to the solemn vows, renders the religious incapable of acquiring or possessing goods of any kind: page 90. The Order loses the right to reclaim goods that pertain to religious, if it has sent a messenger concerning such goods through a legitimate agreement. ibid. A thing cannot be requested without a cause, nor can it be obtained repeatedly for the same cause, ibid. VERALIS 623. Marriages. Marriages can be contracted with future signs; and such contracts will be valid to the extent that, by custom of the place, such signs are commonly used to initiate marriages, page 219. Vicars. Vicars are to be chosen by the Ordinary to assist the parish priest, either because of some permanent infirmity of mind or body, or because of a lack of necessary knowledge. page 157. Coadjutors are to be chosen by the parish priest and approved by the Ordinary, who are added to the parish priest, when the population is so numerous that the parish priest alone is not sufficient to administer the sacraments, in accordance with Chapter IV, Session 21, of the Council of Trent. ibid. This right belongs to all parish priests, in whom, besides the actual care, also the habitual care resides. page 158. Indeed, it also pertains to them even when they have only actual care, provided that the habitual care remains with the Chapter. ibid. However, not everyone who is a member of the Chapter is chosen by the parish priest and confirmed by the Ordinary; but only those who possess the qualities required by law for the exercise of that office, ibid.

[*Latin ed. p. 625*]

All, indeed, understand that teaching a doctrine contrary to that which is laid down here is prohibited under the penalty of excommunication; however, this does not apply to internal acts, or intentions, or personal sacrileges. Therefore, those sacrilegious priests and faithful who, firmly holding to the doctrine transmitted by the Fathers of Trent, or who, in no way attend to it, or even reject it in their hearts, approach the Eucharist with the consciousness of mortal sin, thereby incurring judgment and condemnation upon themselves; for they teach, preach, assert, and defend nothing. We likewise believe that those who teach something different from

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the alleged opinion of the Fathers of Trent are not to be condemned under this excommunication, provided that they do not oppose it diametrically. We will illustrate this with an example: Alexander VII, on March 18, 1666, by decree of the Supreme and Universal Roman Inquisition, had declared those who would teach to be excommunicated, with the penalty reserved to the Roman Pontiff. These propositions were: "Proposition 38: The command to confess is a necessity for the priest who is sacrificing, and is not a precept." Then, "Proposition 39: That particle is understood primarily when the priest will confess in due time." Furthermore, concerning these other 241 propositions enumerated in the same decree, Alexander VII "stood firm" and decreed that these propositions, and each of them, at the very least, were to be condemned and prohibited, just as he condemns and prohibits them; so that whoever teaches, defends, publishes, or even discusses these, either jointly or separately, publicly or privately, except perhaps when impugning them, incurs the excommunication by this very act, from which he cannot be absolved (except in articulo mortis) by anyone, whatever his dignity, except by the Roman Pontiff who is in office at the time (1). Therefore, we ask: Do those who teach, assert, preach, or defend such propositions incur the excommunication of Trent? We believe that the answer must be negative, because the propositions proscribed by Alexander VII do not contain a doctrine contrary to Canon Xl of Session XIII of the Council of Trent; indeed, the former concerns the necessary confession preceding the reception of the Eucharist by those who feel themselves wounded by mortal sin, while the latter concerns confession to be performed sooner or later by those priests, etc., who are sacrificing in mortal sin.

(1) Bullar. Rom., Vol. XVII, p. 428. Edit. Taurin. 1869.

[*Latin ed. p. 626*]

242 Such individuals were obligated to offer [their views] in this manner; hence, those who defend the two propositions condemned by Alexander VII do not deny the doctrine established by Canon XI of the Council of Trent, and consequently, they do not incur the excommunication mentioned therein. However, although they may not incur the excommunication of Trent by teaching or defending the propositions condemned by Alexander VII, they nevertheless incur the excommunication imposed in the Apostolic Constitution, Chapter 1, Title II, which prohibits, under pain of excommunication, teaching or defending, publicly or privately, propositions condemned by the Apostolic See under sentence of excommunication; as it is clear that the propositions cited by Alexander VII were indeed condemned. Bonacina, *De Excomm.*, part. extra *Bullam Coenae*, Disp. II, Quaest. II, Punct. XIV, 5, asks: "Whether one who asserts that sacramental confession is not necessarily required in places where the Council of Trent has not been promulgated, or received in practice, is bound by the excom-

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munication of this Canon?" He answers: "Suarez and Filliucius, without distinction, answer affirmatively." But to me, it seems that a distinction must be made. Whether he asserts this in a place where the Council of Trent is in practice received, or in a place where it is not received in practice; if he asserts this in a place where the Council is not received in practice, I believe he is not bound, even if he does not have a firm standing there; for as long as he exists in that place, he is not bound by the precepts and penalties of the Council of Trent; nevertheless, he sins gravely, because he teaches a false doctrine in a matter of the utmost importance. But if he asserts this in a place where the Council has been accepted, he incurs excommunication, because he performs an action prohibited under excommunication in a place where the Council obligates [its acceptance]; and it can happen that, on the occasion of this assertion, someone may be led, contrary to the common custom of the Church, to omit sacramental confession, at least in those places where the Council has not been admitted. Such a judgment seems truer to us, since the theologians of the Roman Church and the Congregations themselves admit a similar distinction; as is evident from what they have decreed concerning clandestine marriages; and we have not observed any innovation concerning the acceptance of the Council of Trent in the Apostolic Constitution. Finally, it should be noted that such an excommunication is reserved to no one, since no reservation appears in the canon of the Council of Trent.

[*Latin ed. p. 627*]

CHAPTER IV. Concerning the excommunication imposed by the Council of Trent, which pertains to the essential purpose of marriage. The Fathers decreed both against those who deny that marriages are valid as long as they are clandestine, and against those who assert that marriages of children, entered into without the consent of their parents, are null. This doctrine was expressed by the Fathers of the Council of Trent, Session XXIV, Chapter 1, on the Reform of Marriage, in the following words: "Although it is doubtful whether clandestine marriages, entered into with the free consent of the parties, are valid and true, as long as the Church has not declared them invalid, nevertheless, those who ought to be condemned for such things are those who declare clandestine marriages to be valid and true. Clandestine marriages are those which are entered into by those who, with free consent, without parents and witnesses present, falsely claim that they are valid and true. Such marriages, although the Church has always detested them, and the Fathers of Trent condemn them as invalid, are nevertheless valid by themselves, since the contracting parties themselves are ministers of marriage. However, it must be noted that the decree of Trent began to have force thirty days after its publication in each parish. 'Moreover,' the Fathers of Trent decreed, 'that such a decree shall have its full force in any parish after it has been received, or if it has been promulgated, let the

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clandestine marriages be counted from the day of the first publication in that same parish; and those who deny the validity of clandestine marriages shall be excommunicated by this decree.' Therefore, there are two classes of persons who are condemned by this decree: those who deny the validity of clandestine marriages, and those who assert that marriages of children, entered into without the consent of their parents, are valid. These latter can be invalid, both in regions where the law of clandestine marriages is in force, or where the decrees of Trent are in force. But much less invalid are marriages entered into by children without the consent of their parents, whether in Catholic or heretical places; because in such places, there is no ecclesiastical impediment, nor does the lack of consent invalidate them.

[*Latin ed. p. 628*]

The provided text does not contain any quotations from Job 34:13. Therefore, no changes are required.

244. Those who, concerning clandestine marriages, incur no excommunication. Therefore, in order that excommunication may be incurred absolutely, the validity of clandestine marriages must be denied, without any impediment with regard to the Council of Trent, in which case it is contracted wherever it may be. However, in this matter, it must be noted that he who denies that clandestine marriages are true Sacraments does not incur excommunication, provided that he admits of their validity; for the law is concerning the value of the clandestine marriage, not concerning the dignity of the Sacrament which is inherent in it. This question, which was formerly debated in Catholic schools, cannot be brought into doubt after the Encyclical *Arcanum divinae Sapientiae* promulgated by Leo XIII on February 10, 1880 (1), since in it the Pontiff proclaimed the intimate and essential unity of the contract and the Sacrament, so that, since the natural contract is admitted in marriage, the dignity of the Sacrament is also admitted in it: "Nor can that distinction, which is so vehemently proclaimed by the Royalists, move us in any way, by means of which they separate the marriage contract from the Sacrament, with the very intention of, while preserving the reasons of the Sacrament for the Church, handing over the contract to the power and the judgment of the princes of the state." Indeed, such a distinction, or rather, a division, cannot be proven; for it has been shown that in the Christian marriage, the contract is not separable from the Sacrament; and therefore, a true and legitimate contract cannot exist without it being, at the same time, a Sacrament. For Christ the Lord has increased the dignity of marriage: but marriage is itself the contract, provided that it is made lawfully. Moreover, for this reason, marriage is a Sacrament, because it is a sacred sign and efficacious of grace, and it refers to the mystical marriages of Christ with the Church. The form and figure of these are expressed in the very bond of the highest union, by which the man and the woman are joined together, which is nothing other

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than marriage itself; and nothing is more abhorrent to the truth than to consider marriage as some added ornament, or as a property that can be separated and subjected to the arbitrary will of men. Therefore, one thing is required in order that Christian marriage may be a Sacrament, namely, that the contract be made lawfully; that is, with the will of perpetual union of life, and of procreation of children, which, for the sake of religion, may be separated; but this religion is scarcely presumed in those who enter into clandestine marriages.

[*Latin ed. p. 629*]

245 Another class of persons who are included in the "ministerium" is that which, according to the decree of the Council of Trent, is subject to excommunication for denying the validity of marriages contracted by children of families without the consent of their parents. These are the most noble of Christians, who, by their very act, defend the dignity of the Sacrament of Matrimony. For they assert that marriages contracted by children of families without the consent of their parents are not valid, and that parents can render such marriages valid or invalid.

From this, two opinions are condemned; one, in fact, that marriages contracted by children of families in Berne without the consent of their parents are invalid; the other, in law, that such marriages can be rendered valid or invalid by parents.

It is a weighty matter, and history clearly teaches us that the legislative and judicial power, with which we are concerned, has been freely and constantly usurped by the Church, even in those times when the princes of the Republic have been unwilling or conniving in such matters.

For it is clear that the impediment to marriage does not belong to the parents, nor to secular princes, but only to the Church: for when marriage is a Sacrament, the Sacraments belong only to the power of the Church, and no one should interfere with them. Hence, it was also defined by the Fathers of Trent that no impediment to marriage can be constituted by the power of the Church, and that causes of marriage belong to the ecclesiastical judges. Session XXIV, Canon 4 and 12.

Likewise, Leo XIII has excellently discussed this matter in the aforementioned Encyclical, in these words: "Therefore, since marriage is, by its own force, by its own nature, by its own essence, a sacred thing, in harmony with itself, it is fitting that it be governed and regulated not by the power of princes, but by the divine authority of the Church, which alone has power over sacred things."

And a theologian has affirmed that if a secular prince were to assert that no marriages contracted by children of families without the consent of their parents are valid, he would not incur the present excommunication,

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because he is speaking of a matter that does not concern him.

[*Latin ed. p. 630*]

246 Let it be understood that this differs from what the Fathers of Trent established. Lest we wander into uncertainty and be entangled in numerous questions, we shall adhere closely to the words of the Tridentine Decrees, so that we may only proclaim what is explicitly stated, whether in Canon IV or Canon XII; for they plainly say: "If anyone shall assert that the Church could not establish impediments to marriage, or that she has erred in establishing them; let him be excommunicated." Furthermore, thus the decree of Trent states: "If anyone shall say that the causes of marriage do not pertain to the ecclesiastical judges; let him be excommunicated." Moreover, we read in Session XXIV, Chapter VI, concerning the Reform of Marriage: "He who affirms that a marriage 'marriage' which has been separated from a woman by a 'rapter,' and established in a safe and free place under civil authority, does not deny the legitimacy of the woman, but only affirms that the 'rapter' himself has the right to marry her; and nevertheless, the 'rapter' himself and all those who give him counsel, help, and favor in this matter, are, by the very fact, excommunicated, and perpetually excluded from the sacraments, nor are they considered true or worthy members of the Church; and if they are clerics, the Holy Synod decrees that they shall be deprived of their office." It is also clear from the cited Encyclical of Leo XIII that, as long as the woman remains in the power of the 'rapter,' neither she nor the 'rapter' can validly marry, and that all shall decide according to their own judgment. Furthermore, it is decreed that the 'rapter' shall provide the abducted woman, whether he has taken her as his wife or not, with a dowry, at the discretion of the judge.

CHAPTER V.

Concerning the excommunication imposed by the Council of Trent upon those who abduct women, and their accomplices.

In order to determine who incurs the Tridentine excommunication for the crime of abduction, it must be ascertained whether the abduction in question substantially consists of the elements required. Abduction of persons gives rise to such complex questions, as, for example, the explanation of the crime, or the impediment to marriage, which some interpret narrowly, while others understand in a broader sense.

In the first place, abduction is a violent...

[*Latin ed. p. 631*]

247. The abduction of a virgin, or of another honest woman, whether free or bound, for the purpose of satisfying lust, from one place to another, which is morally distinct. Another case is: the violent abduction of a woman

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with the intention of entering into marriage. First, Reiffenstuel teaches in *Ius etenim et foeminae minus honestae*, Canon Law, Volume IV, title 1, number 373: that for an abduction to be considered such, some violence is required, whether physical... or moral, through threats or grave fear; then Roncaglia, in his *Theologia morali universa*, writes: "And it can be moral (violence) as when, through persistent prayers, one inspires a reverential fear, or through fear that falls upon a steadfast man." Furthermore, other, most excellent doctors teach that even prostitutes can be abducted, and only that they must be honest, not virgins or free women, but any woman, even an dishonest one, provided she is abducted with the intention of entering into marriage; but if she utterly rejects marriage with men she does not wish to marry, and no reverence or fear is inspired by such persistent prayers, then such a marriage is sacrosanct, and she ought to enjoy the freedom that it confers; therefore, persistent prayers, although importunate, do not, by their very nature, constitute violence, and the Council, speaking in general terms, does not exclude them, but rather indicates that, if such prayers are not sufficient, other means may be used, or not used, depending on the circumstances. However, 1. This abduction must be violent, that is, against the will of the woman; for one cannot be abducted without force: and "Abduction" is not said where a woman is taken away willingly for the sake of marriage. See Canon 6 concerning Abductors. Therefore, if a girl consents, there is no abduction, and consequently, no impediment, nor excommunication. For no one abducts one who willingly follows. De Justis, in *De dispensationibus matrimoniis*, book II, chapter XVIII, number 70, writes: "Nor is it to be called an abduction, whatever others may contradict, in the case where a woman is taken away solely through persistent prayers, or through some payment, unless such prayers were of such a nature as to amount to violence." But if deceptions are employed to abduct a girl with the intention of marriage, this violence is equivalent to physical violence. Hence, Sánchez and Pirhing, among others, teach that a woman, whether through persistent prayers joined with reverential fear, or through great fear, or through deception, is abducted not for the purpose of marriage, but solely through prayers, or through fear, or through deception. This is the opinion that we have taken from the decree of the Holy Congregation, which was given in the year 1864, which we extract from Volume I of the Acts of the Holy See, and which we bring to your attention.

[*Latin ed. p. 632*]

248. For the readers to understand the nature of the deceptions involved, let us consider the following case: Whether acts of violence should be considered in determining the nullity of a marriage. Sacred Congregation (1), page 15. Although Caia, the wife of Titius, had been legitimately expelled from the marital home and the family, she had been granted permission for her sons, who remained under Titius' authority, to visit their mother occa-

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sionally. This circumstance was exploited by the mother to the detriment of her daughter, Agnes. For when the unmarried Agnes resided in her father's house in city A, and occasionally went to a certain frequented house for social visits, a certain Sempronius, a widower, was inflamed with love for Agnes. Then Titius, the young woman's father, and the young woman herself, Agnes, repeatedly refused Sempronius' advances, until Sempronius, realizing that this legitimate path was closed to him, devised another, entirely unheard-of plan. Indeed (as we have learned from the records), when Caia, Agnes' mother, was staying in a coastal town B for health reasons, and Titius, Agnes' father, had left his city A for reasons of his office, Agnes went to that same place B with a female tutor and another sister, and visited her mother, who was staying in a public inn. Agnes stayed there for several days, until her mother, under the pretext of a better dwelling, with deceitful intentions, persuaded her daughter that she had found a more convenient house in the same area, and showed her the way. In reality, Caia, the mother, together with the aforementioned tutor, led Agnes to a more remote house, and upon entering, Caia and then the tutor, feigning reasons for leaving, departed, leaving Agnes alone there, as if in her own home. At that point, Sempronius suddenly appeared, and terrified Agnes, revealing to her that she was to be found in his house and under his authority. Agnes was forced to remain in Sempronius' remote house for part of the day and the entire following night, during which, as she herself testified, she cried out and attempted to escape, but in vain. The following day, albeit late, the tutor returned, to whom Agnes promptly declared her willingness to return home that very day (which, it seemed, would be sufficient to appease Sempronius). But the mother (who, before her daughter left, together with the tutor, had still urged the terrified girl not to return to her father's house, so that her father's anger, due to what had happened, would be lessened; but rather, to go to some public inn in the same city A, so that there she could more conveniently consider what should be done next). Therefore, Agnes yielded to the importunate persuasions of her mother and the tutor, and that same day, Agnes and the tutor set out on the road to return to their city A. But when they reached a certain station, Sempronius appeared again, entering the same carriage (wagon) in which Agnes was sitting, and Agnes was so struck by the presence of Sempronius that she cried out so loudly that the carriage driver intervened and ordered Sempronius to leave. Which Sempronius then did, at the urging of another man, C, who was also sitting in the same carriage, and who acted as Sempronius' accomplice. Thus, Agnes arrived at the public inn D in her city, at the urging of the man C, and also of the tutor, who was a participant in Sempronius' schemes. And these are the events that occurred in this inn. A room was assigned to Agnes, at the tutor's request, to which access was only granted through the tutor's own room: and it had windows that did not overlook the public

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road, but...

[*Latin ed. p. 633*]

On June 25, 1864, the matter was debated, and it was decided that the marriage was invalid, answering the posed question affirmatively; this judgment was reaffirmed on August 27 of the same year. From this judgment, the following corollaries were deduced by the cited Avanzini: 1. It is equally unlawful to forcibly seize a girl from her own home, as it is to deceive her so that she unknowingly falls into the hands of one intending to abduct her. 2. Indeed, it seems equally unlawful to seize a girl from her own home, as it is to deceive her so that she does not return to her home after she has freely left. 3. It makes no difference if the girl consents to these deceptions. (1) For consent obtained through deception is equivalent to open violence. Furthermore, we believe that it is also evident from what we have discussed above that the abduction only concerned the interior of the house. Therefore, no exit was permitted to the girl without the permission of her governess, who guarded her so carefully and closely that whenever the girl left the house, the governess would lock and secure the room with keys. Agnes remained in this lodging for three weeks, during which time she left twice, but always accompanied by the governess; first, when she went to the confessional, and second, to consult with a certain lawyer. The governess forbade Agnes from this second outing. However, they began to argue and shout so loudly that the servants of the lodging were present, and with their help, Agnes was able to leave. She then went to a lawyer residing not far from the lodging (accompanied by the governess) and revealed her situation to him, asking what she thought should be done. The lawyer replied, "There is no other remedy for this evil except marriage," and he sent a letter to Titius, Agnes' father, in which he recounted the events and concluded that marriage was necessary. Titius, indignant, never spoke to his daughter again, nor did he see her afterward; however, after considering the matter and with the advice of others, although unwillingly, he consented to his daughter's marriage to Sempronio, and that was for the reason that it seemed that something had been decided regarding his daughter's fate. News of this affair spread widely, and it was said that the actions of Sempronio were publicized in public newspapers. Therefore, Agnes remained in that public lodging, from which she had only left twice, under the control of the governess, under the care and direction of Sempronio, and realizing that she had only the choice between a convent and marriage to Sempronio, she finally chose the latter, because she felt that she lacked a religious vocation. Therefore, with everything prepared, Agnes finally left to celebrate her marriage, which began in such a way that, with the priest present, it seemed more like a funeral than a wedding. Agnes, with a sad expression, gave the outward signs of consent, and her father, who

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had not even deigned to look at his daughter in this act, seemed almost stunned by the event, in the manner of that region. However, after more than four years, Agnes entered a monastery; Sempronio requested and obtained a divorce; and Agnes insisted before the ecclesiastical court for a declaration of nullity of the marriage, which was granted, after a thorough examination of the case, on the aforementioned date and year. (1) When presenting these facts, the cited Avanzini certainly referred to the first corollary, in which a girl is deceived. If the girl realized that...

[*Latin ed. p. 634*]

250. It is not considered a rape when a man takes a woman for himself; but if he takes her through the agency of another, even though the marriage is entered into for the sake of avoiding the danger of marriage, the one who procured the rape, although he did not personally commit the act, incurs excommunication and other penalties, as if he had committed the rape himself; however, the woman, even if she is not separated from him, can, if she wishes, enter or be taken into marriage, or order that she be taken, not for herself, but for another, even though the penalties of Trent are incurred against the one who procured the act; nevertheless, a marriage is contracted between the one who was taken and the one who took her, contrary to the one who procured the act, not contrary to the one who was taken and the one who took her. For the Fathers declared that excommunication is incurred only between the one who commits the rape and the one who is raped, and not between the one who procures the rape and the one who is raped; for the one who procures the rape does not intend to commit the act of rape itself, but rather to bring about the marriage. Therefore, it is rightly said that those who, at the very beginning, are excommunicated for rape, incur this excommunication because the woman is taken, and not because she is raped; therefore, the violence used is not intended to commit the act of rape, but to bring about the marriage. Schmalzgrueber, in loc., n. 20. "Although it may be the same, whether one takes a woman whom he wishes to marry, either by himself, or through another with her consent, or at her command, nevertheless, in order for this to incur the penalty, it is necessary that the woman be subjected to the power of the rapist; however, she must freely and voluntarily consent, and must not be deceived or tricked, for while she can resist and overcome these deceptions, we do not believe that this constitutes a rape in this case, nor do we believe that open force is equivalent to deception; for when someone willingly does something, knowing what it is, and yet follows and embraces it, when he could reject it; nor can it be said that she was deceived or seduced by evil arts and tricks. Agnes, indeed, did not foresee the deceptions of her mother and teacher, as is clear from the case; and when she foresaw them, she could not eliminate them; therefore, she suffered true violence. Therefore, the third corollary presented by the most learned Avanzini seems to us to

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need some modification: the purpose and end are not the same in the case of Agnes. And even if the girl foresees these deceptions and consents, and understands them, it is not entirely true that, as it lies, it is too general, and that it does not follow closely from the premises and arguments; rather, it is more apparent. And to this, we offer what the most distinguished author discusses in Appendix I, page 54. For the rest, we are speaking of those things that pertain to the substance of rape, and we offer nothing concerning the validity of marriage after the rape has occurred, since we are considering the opinion that a rape can, in some way, be voluntary, even though a marriage can be validly contracted in this case. On this matter, see Avanzini, Volume and Appendix cited.

[*Latin ed. p. 635*]

231. It is, indeed, to safeguard the freedom of marriage, since the masculine gender encompasses the feminine. For the Tridentine law speaks most clearly of the one who kidnaps, of the kidnapper who wishes to take the kidnapped woman as his wife; it speaks of the kidnapper who is compelled by the judge to provide a dowry for the woman he has kidnapped; therefore, it speaks of two persons, one of the masculine sex and the other of the feminine sex; the first kidnaps the other and takes her away; but in the law itself, there is no open interpretation that allows for this. We are not led to embrace this opinion, nor by the end, or motive, of the law; for, firstly, a hateful law is not to be extended from case to case, nor because of the equality of reason; secondly, it rarely happens that men are kidnapped; but laws are made for those things which frequently occur; thirdly, because not every end is included under a hateful law, but only that which is intended by the Legislator, and which is circumscribed by the words of the law; otherwise, the hateful law would be extended from case to case, and would scarcely be distinguished from a favorable one. However, it is clear that the opinion of others among the Fathers of Trent was that the kidnapping of women was only to be prevented, because they spoke of kidnapping in the present case in a sense and manner that is obvious. Kidnapping, in the present case, is commonly understood as the violent abduction of a woman with the intention of marriage. For this reason, the Fathers of Trent did not speak of the kidnapping of men, but it is absurd to wish to include under a written law a case which the legislators are not found to have included. Finally, everyone knows that this is the opinion of the most learned theologians and canonists, so that it would be a mistake to depart from it.

2. It also seems to be to be excluded the opinion of those who subject to excommunication even men, who do not kidnap a woman, nor take her to another place, but who besiege her in her own home, so that she cannot leave, or who detain a woman who is entering a man's house for any reason, e.g., out of politeness, so that she cannot return to her own home.

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(1) For in the cases cited, defendit lib. VI, Decis. 33, n. 20, with this reasoning: "Because a woman who is besieged in her home, loses her freedom, suffers violence, and is considered to be in the power of him, whose satellites or assassins besiege the house; therefore, until she is freed from that siege, she cannot validly contract marriage with him from whom she is besieged." Aliam art. IV, § II, defends the opinion of Billuart in Tractatus de temperantia, diss. VI, who says: "I believe that the words of the Council can also be understood in a sound sense of violence inflicted without abduction from place to place; and no one doubts that it is a kidnapping that prevents marriage, if anyone, e.g., forcibly detains a girl who is traveling, or who is outside her father's home, in the place where she happened to be, for the purpose of..."

[*Latin ed. p. 636*]

252. A rape is properly defined as the violent abduction of a woman, and therefore, the necessary condition established by the legislator for the imposition of penalties against those who commit such acts; however, these cases are exceedingly rare. Furthermore, in the aforementioned case, the reasons presented equally exclude this possibility. We also note that the most esteemed Doctors reject both opinions. However, we cite Ferraris, *V. Matrimonium*, Art. VI, n. 125, who writes: "A rape, in order to be an impediment to marriage, requires the translation of the woman from one place to another; for if someone finds a virgin in the house of her father, or in another house, and does not remove her from that house, but rather confines her there, or drags her from one room to another, so that he may more easily violate her, this does not constitute a rape." He cites at least nine Doctors to support his opinion. Roncaglia, *Universa moralis Theologia*, Vol. II, p. 171, Edit. 1760, R. II, writes: "When we are dealing with odious acts, it must be said that severe penalties do not apply where there is no rigorous rape, of which the Council of Trent speaks." However, in the first question, he wrote: "But this violence must be understood as the abduction of the woman from the place where she is, to another place, in which she is under the power of a man; for she is not considered to have suffered violence, if she were abducted in such a way that she remained in her freedom." This reasoning seems sound, at least for the first case. Reiffenstuel, *Ius Can. univ.*, Book V, Title XVII, § 1, writes: "If a woman is not abducted from one house, for example, from her father's house, to another, but only from one room to another within the same house, or from a public place to a secret place, then it is not properly a rape." We do not deny that, in this place, the author speaks of a rape committed for the purpose of satisfying lust; however, he does not make any distinction with regard to the cause of contracting a marriage, as is evident from what he discusses in n. 10. Finally, let us pass over others, and cite St. Alphonsus, *Theol. Mor.*, Book VI, n. 1107: "It is required that the woman who is raped be taken from one place to

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another... or even from one house to another, by some intervening distance. Therefore, it is not sufficient that the woman is transferred from one room to another in the same house... It is sufficient, if she is transferred to a separate place, in which she is under the power of a man, even if she has no dealings with him there." The same can be found in Schmalzgrueber, Vol. V, Title XVII, n. 9. From these passages, we believe it is clear that abduction, even if the woman subsequently consents spontaneously after the violence ceases, is an impediment to marriage, unless she is held outside the power of the one detaining her; for the words of the Council are understood in a natural sense, and are consistent with violent detention.

[*Latin ed. p. 637*]

253 The removal of a person from one place to another is a necessary condition, in order that the act of abduction may constitute a crime. This reasoning, drawn from the purpose of the law, namely the freedom of marriage, which the Fathers of Trent wished to protect by a strict law, is not opposed by any argument of authority. For, as we have already observed, the Fathers of He Trent did not intend to include under the law every end by which the freedom of marriage is offended, but only that end which is offended by abduction. Does not, for example, the father of the girl offend the freedom of marriage, if, using violence, he brings his daughter, without the knowledge of the fiancé, to the house of the fiancé, and the fiancé, taking advantage of the opportunity, locks her up in his house and detains her? Nevertheless, no one would say that the father or the fiancé is an abductor, or that either or both of them incur the penalties prescribed by the law of Trent. 3. Furthermore, it is equally clear from the decree of the Fathers of Trent that those who inflict violence, not upon the girl, but upon her parents, are to be excluded from incurring excommunication; for the law is about the violence inflicted upon the woman, and her abduction, and not about violence inflicted upon anyone else. Therefore, if, after the abductor has violently taken the parents away from their home, the girl, willingly and of her own accord, follows the abductor, the crime of abduction is not considered to have occurred. "If the girl is taken away willingly and with consent," writes Ferraris, Vol. 5, "marriage," n. 116, "although the parents, or guardians, are unwilling, there is no impediment to marriage." And he cites at least eighteen doctors in support of this view: "And the reason is, because the Council of Trent precisely intends to safeguard the freedom of marriage, which is certainly not violated if the girl is taken away freely and with consent, although the parents may suffer violence, or may be unwilling, since the freedom of the girl who wishes to marry does not depend on the will of the parents, and it is perfectly valid for her to contract marriage against their will, as the Council of Trent itself decreed in Session XXIV, on the Reform of Matrimony, chapter 4, anathematizing those who hold the contrary opinion, saying there: "This Holy Synod condemns

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with an anathema those who falsely assert that marriages contracted by children of a family without the consent of their parents are invalid, and that parents can make them valid or invalid." Furthermore, the Council of Trent states that the impediment to abduction ceases if the woman who has been abducted is separated from the abductor, and is placed in a safe place, whether she is restored to her parents or not; and therefore, even Lucius III, in chapter 6 of the Decretals concerning Abductors, established that: "The abductor is not to be considered guilty, if the woman has given her consent, and if she is betrothed to him before her parents complain of the abduction." These arguments, however, seem to be conclusive.

[*Latin ed. p. 638*]

254 4. Equally erroneous is the opinion of those who maintain that the penalties imposed by the Fathers of Trent should not be applied to those who, not only through violence, but also through seduction, commit the crime of abduction, since the Tridentine law speaks only of abduction, by which the freedom of marriage is violated, and therefore of abduction which involves violence and resistance on the part of the abducted woman; in seduction, however, there is no violence, and the woman, knowingly and willingly, follows the abductor; consequently, abduction does not take place. Nevertheless, with regard to the validity of marriage, the distinction made by learned writers in *De Nouvelle Revue Théologique*, Volume 12, page 393, note XV, seems to us to be the best. It must be carefully considered whether the woman who was abducted simply consented to the abduction, without thinking or deciding about the future marriage; or whether she allowed herself to be abducted, and even desired it, in order to enter into marriage. In the first case, it cannot be presumed, nor should it be, that she intended to enter into marriage; therefore, as long as she remains under the power of the abductor, she is not to be considered to enjoy the necessary freedom for entering into marriage; in the second case, such a defect cannot be presumed; since she clearly allowed herself to be abducted for the very purpose of entering into marriage, willingly and knowingly. And through such a criterion, various cases concerning the impediment of abduction can be rightly understood and distinguished, and thus the apparent contradictions between the various resolutions of the Holy General Council can be perceived. However, the consent to abduction, for the purpose of entering into marriage, must be clearly proven on the part of the woman; since it inherently involves violence, it must be clearly excluded, and freedom and all forms of will must be asserted. Such proof can be derived, for example, from previous betrothals, and from an explicit consent to marriage, freely and manifestly expressed by both parties beforehand. 5. Finally, we reject the opinion of those who assert that this excommunication applies also to those men who abduct a woman, not for the purpose of entering into marriage, but for the sake of

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satisfying their lust, supported by the arguments that the Council speaks generically, and that previous legislation includes this case, and that even ecclesiastical men are subject to these penalties, with whom, if they are in the sacred state, marriage cannot exist, but only the intention of satisfying lust. Indeed, i. from the context of the Tridentine chapter, it is clear that the discussion about abduction relates to entering into marriage, and to preserving the freedom of this union; therefore, its words are not so general that they should be applied to other causes of abduction, in which there is no consideration of marriage. Consequently, the second argument also fails; for whatever...

[*Latin ed. p. 639*]

We must believe that the previous legislation concerning abduction and its causes has been superseded by the decree of Trent. Nor does it impede that those belonging to the clergy are subject to the same penalties; for they, if constituted in minor orders, may commit the crime of abduction in order to enter into marriage, which they truly and legitimately enter into; but we do not speak of clerics constituted in higher orders, unless as those who offer support, or counsel, or assistance, or favor; for with these, no marriage can validly be contracted, and it would be most inappropriate to apply the law of Trent to them; indeed, it is clear that we are speaking of abductors and those abducted, among whom, a woman established in a free and safe place, may validly contract marriage, which in no way can be applied to a cleric constituted in the sacred orders. Finally, our exposition is favored by the decrees of the Holy Congregation. Rigantius, in his *Commentaries on the Rules of the Apostolic Chancery*, Rule 49, quotes the following sentence, given on January 23, 1586: "Abductors," for a reason other than that they might take her as a wife, are not "included in Chapter 6, Session 24, on the Reform of Marriage," even because of the majority of reason, "nor is the penal constitution extended to this case." This sentence, however, is clearly that of the Holy Congregation, as is evident from the change in the wording used in the dispensation of impediments: For, whereas before it contained these words: "provided that the woman has not been abducted," after the declaration of 1586, it was changed to: "provided that the woman has not been abducted because of the marriage to be contracted"; that is to say: "provided that the woman has not been abducted for the purpose of contracting marriage." Such an addition excludes any other cause. But what if a man abducts a woman with whom he had previously entered into betrothal? We find that the Doctors disagree in their opinion. Some affirm that the abductor is exempt from the prescribed penalties, because the abducted woman is bound to contract marriage with the abductor, and therefore no injury is done to the freedom of marriage by the abduction. Others make this distinction: If there is a just cause for the woman to withdraw from the betrothal, the abductor is subject to penalties, because in this

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case, the woman regains her freedom; but if there is no cause for withdrawing from the betrothal, he is exempt from penalties, for the reason stated above. Finally, others contend that the abductor incurs penalties in both cases. We say that the latter should be followed. Indeed, in the decree of the Council of Trent, there is no exception or limitation; nor can previously entered betrothals be a legitimate reason for abducting a woman against her will; for the greatest disgrace results to the woman from the abduction; therefore, such an abduction is not a legitimate reason for withdrawing from the betrothal.

[*Latin ed. p. 640*]

256. One must be wary, when a crime is constituted. From this, it likewise follows that a legitimate presumption exists, that if the bride has been forcibly abducted, and does not wish to suffer dishonor, she will repudiate the marriage with the abductor, or at least, will not consent to enter into that state while remaining in that condition. Therefore, a lack of freedom and will in the bride must be presumed. Furthermore, the bride cannot, nor ought she to be, forcibly compelled to observe the bond of betrothal; for that which she has freely promised, she ought to be permitted to observe freely and without crime, and her will must be presumed. Finally, in law, only one exception exists, namely, if the bride freely and willingly consents to the abduction, as is evident from the chapter concerning this matter, which we cited above. But besides the abductors, in the Trident Council, all those are excommunicated who provide counsel, assistance, or favor to [the abductor]; and we have stated in our commentaries, on numerous occasions, who these are, and what actions they must take in order to incur excommunication. Only one question remains to be settled in this place: whether the parish priest who blesses a marriage before the bride is placed in a safe location, should be considered as a supporter of the abductor, and consequently, be subject to excommunication and other penalties. To answer this question, it must be noted that this parish priest, unless he has previously provided assistance or counsel to the abductor, will incur excommunication only under the head concerning favor; but favor must take on the character of a prohibited action, so that an action can be taken against it with excommunication; but in this case, the favor given to the abduction is what is excommunicated, not the marriage itself. But before the marriage to which the parish priest gives his blessing, the abduction has already been consummated; therefore, the priest's favor has in no way extended to the abduction; therefore, he incurs no penalty. However, if, before the abduction is consummated, the priest has promised the abductor that he will provide his assistance in the marriage, he cannot be excused from excommunication, nor from other penalties, since such a promise constitutes favor to the abductor, and encourages him to carry out the abduction, which he perhaps would not have accomplished, if the priest had

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denied his assistance in entering into the marriage; for in this hypothesis, the abduction would be carried out in vain, since no one would, in fact, provide assistance to it. Such a judgment is followed by the most esteemed authorities, among whom Schmalzgrueber, in the aforementioned passage, number 51, writes: "This priest will not incur the penalties of the Trident Council, because he does not favor the crime of abduction, which has already been committed and consummated, but rather, the marriage itself." This is excepted only if, before the abduction, he has promised the abductor that he will assist in the marriage with the abducted woman, and thus, has encouraged her to carry out the abduction.

[*Latin ed. p. 641*]

257. "For then, as if a defender of punishments, he would be subjected to being carried away [by passion]." Finally, for the sake of decorum and to avoid scandal, the impediment to marriage should cease immediately, and the woman, having been removed from the power of the abductor, should be placed in a safe location; however, the excommunication should continue for as long as it has not been removed by absolution, which is not reserved to anyone. Nevertheless, it is to be noted that if, before absolution, the cause has been presented to the Apostolic See, for example, to obtain a dispensation from some intervening impediment, then the excommunicated person is absolved by the one to whom the execution of the dispensation is entrusted, because, when the cause and all that is related to it are referred to the Roman Pontiff, the entire matter is considered to be remitted to that same delegate, according to the rule that, by the imposition of the hand of the Pope in some matter, the hands of those below are bound."

(1) Cap. Ut nostrum, 56, De CAPUT VI. Concerning the excommunication pronounced by the Fathers of Trent against those who compel slaves and subjects to enter into marriages. This excommunication is expressed in these words by the Fathers of Trent, Session XXIV, Chapter IX, on the Reform of Marriage: "It often happens that the minds and desires of temporal lords and magistrates are blinded by worldly affections and lusts, so that they compel men and women, living under their jurisdiction, especially the wealthy, who have the hope of a great inheritance, to enter into marriages against their will with those whom these same lords or magistrates have chosen for them. Therefore, since it is most wicked to violate the freedom of marriage, and injustices arise from those from whom justice is expected, the Holy Synod commands all, of whatever rank, dignity, and condition, under the penalty of an anathema, which they incur by the very fact, not to compel in any way, directly or indirectly, their subjects or any others, to prevent them from freely entering into marriages."

"Appellations, recusations, and relations, namely: 'So that it may be known what is the judgment of God': and below. To the judges, we have given instructions that, if, after the second mandate, by which we have

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recalled the knowledge of the matter to our judgment, they recognize that a tradition of the seal has been made by the aforementioned H. [referring to a specific official], they should declare it invalid and void, forbidding them to use it in any way."

"It is more fitting for the Roman Pontiff to have a matter recalled to him, than for anyone to summon him regarding some matter."

[*Latin ed. p. 642*]

258 In expanding this point, two matters must be investigated: 1. Which persons are subject to this excommunication? 2. Which actions, and under . And concerning the first point, the opinion of Suarez was that, in the Council of Trent, all were excommunicated, even private individuals, who compel someone to enter into marriage. This opinion, which was also defended by Filliuccio, seemed more probable to the most excellent commentator from Padua, who writes in n. 413 of Part II: "The subject of this censure" are all and each, "whatever their rank, dignity, and condition, who compel someone, or someone, to prevent them from freely entering into marriage. This censure, according to Suarez, in Disputationes, XXII, I, Section VII, is universal in regard to persons, because although in the beginning (of the Council of Trent) there is mention of temporal lords and magistrates; nevertheless, when the precept and censure are mentioned, the words are very general. After carefully considering everything, this opinion seems more probable to me. He adds: "However, there are those who, with Sanchez, Concina, and Bonacina, maintain that excommunication applies only to temporal lords and magistrates, namely, those who possess temporal jurisdiction. Whatever may be the intrinsic probability of this second opinion, certainly the number and importance of the Doctors who support it give it a sufficiently solid extrinsic probability." From this, it follows that private individuals, in such an opinion, cannot be condemned with excommunication, since the true probability, which also arises from the number and importance of the Doctors, excludes excommunication, as we have asserted not once in our commentaries. However, we absolutely deny that the opinion of those who affirm that not private individuals, but only temporal lords and magistrates are subject to excommunication in the Council of Trent, lacks intrinsic probability; rather, we affirm that it is endowed with intrinsic probability more than the other. Indeed, 1. In extensive laws or decrees, words must be understood in their obvious and natural sense, unless something absurd or inconvenient follows; but it is certain that in the Council of Trent, the words used by the Fathers constantly indicate that only those who possess temporal jurisdiction, or are magistrates by office, are subject to exlamation; therefore, the words of the Council of Trent apply only to these, and not to other private individuals. We find a lesser probability 1. from the title of the chapter, which is: "That temporal lords or magistrates do not attempt anything contrary to

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the freedom of marriage." But the title contains the essence of the chapter.

[*Latin ed. p. 643*]

239 2. From the very words of the chapter: Thus, most often, temporal lords and magistrates: Temporal lords are those who hold civil or supreme, or feudal, dominion over a specific territory; magistrates, on the other hand, are those who perform public duties, by reason of which they exercise jurisdiction over the people; such as, in ancient times, governors, legates, and delegates; now, praetors, prefects, ministers, etc. 3. From the words: "men and women living under their jurisdiction": Jurisdiction is defined as the faculty of someone possessing public authority and eminence over others, to govern and rule them. It is therefore a public power, not a private one, such as paternal authority. 4. Indeed, it is so public that even the wealthiest men and women, or those who have the hope of a great inheritance, can be compelled, not only by prayers or fear, but by threats and penalties, to enter into marriages with those whom the lords or magistrates themselves have prescribed. But private individuals cannot impose such things on the wealthiest men and women; much less can they force them, against their will, into marriage; and even less can they do so through penalties and threats, and all the more so when dealing with those whom they themselves have prescribed. And those who compel and violate the freedom of marriage are again called lords and magistrates. Certainly, such actions or words cannot in any way belong to private individuals. 5. This is most clearly confirmed by the following words: "For it is most wicked for injuries to arise from those from whom rights are sought." But it is the duty of the supreme princes and magistrates to establish or declare rights. 6. Moreover, what is more, throughout the entire chapter, there is no expression that can be applied to private individuals or other persons who lack temporal magistracy or principality? Indeed, the persons designated by the following words – "all of whatever rank, dignity, and condition" – are no different from those about whom the Fathers of Trent spoke in the preceding part of the chapter; for they are those who either directly or indirectly force their subjects, or others, to refrain from freely entering into marriage; if they have subjects, then they have jurisdiction and power, and therefore they cannot be private individuals. Nor can anyone object to the word "condition"; for both princes and magistrates existed, especially during the time of feudalism, and are of a different condition, both in name, in power, and in the diversity of jurisdiction: if, therefore, a word can be applied to the former, there is no reason why it should not also apply to the latter, of whom there is no mention in the law. But it presents no difficulty, rather it perfectly confirms our opinion, that in the Tridentine Ca-

[*Latin ed. p. 644*]

260 Let those who, not only compel their subjects, but also any others, to

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refrain from freely contracting marriages, be excommunicated. For these individuals ought to be either temporal princes or supreme magistrates, and possess great authority; if authority is required of subjects, much more so of those who are not subjects; and would not these princes or magistrates be able to exercise such force over relatives and affine, and over others who, for some reason, depend on them, even though they do not live under their power? Therefore, these words can also be aptly applied to temporal princes and prefects, and we extend the meaning of the Tridentine decree even to private individuals. Therefore, the intrinsic reason excludes private individuals from the present excommunication, and it is not true, as the most learned Suaresius asserts in the Tridentine chapter, that the words are most general when a precept and censure are given. But the very commentator Patavinus admits that there are more, and more serious, authors who favor our opinion; therefore, it must be admitted that our opinion is supported by both intrinsic and extrinsic reasons, and therefore, those private individuals who compel someone to refrain from freely contracting marriage should not be subject to the present excommunication. This is the opinion of the Holy Congregation of the Council, as is clear from the declaration cited by Fagnanus in Chapter "Insinuante," no. 4. It reads as follows: "The Sacred Congregation of the same Council, having been consulted: Whether the prohibition of the aforementioned Canon 9 concerning the freedom of marriage includes private individuals; answered: It does not include, but only temporal lords and magistrates of any rank and condition." However, let no one think that by the name of temporal lords, kings and emperors are meant; for these are never considered excommunicated, unless they are expressly named, as we have affirmed and demonstrated not once in our commentaries (1). But in our time, unless the king, queen, emperor, or empress are named, because the words encompass all those who hold temporal jurisdiction, of any rank, dignity, and condition, they seem worthy of special mention; "the reason is, both because of these persons and because when the Supreme Pontiff intends these things, he usually expresses them." And indeed, Pope Pius IX did so in the Apostolic Constitution "Sedis." Therefore, since both opinions are probable, kings and supreme rulers who violate the Tridentine decree cannot be condemned with excommunication; all the more so because our opinion is much more probable.

[*Latin ed. p. 645*]

261. Emperors and others who hold supreme power within a defined territory are those who compel unwilling subjects to enter into marriage, and it is given that they can do so; we do not know whether others incur this excommunication. Therefore, only temporal lords and magistrates are subject to such an excommunication; thus, neither parents who, by any means, force their children or relatives who are unwilling to enter into marriage;

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nor lords who compel slaves; nor parish priests or bishops, since these do not hold temporal jurisdiction, nor do they exercise a magistracy. However, if a bishop were also to exercise temporal jurisdiction and transgress the decree of Trent, he would incur excommunication, as is evident. II. The action that incurs excommunication is to directly or indirectly compel subjects or any others to prevent them from freely entering into marriage. Therefore, violence, whether physical or moral, is required. Coercion is direct if it is inflicted directly upon the person; it is indirect if it is inflicted upon other persons, whose authority can induce the unwilling to enter into marriage. For example, if a person who does not wish to enter into a proposed marriage were to be imprisoned, or deprived of property, office, etc., the coercion would be direct; if, on the other hand, the parents of a person who is unwilling are compelled by threats and penalties to induce their son or daughter to enter into that marriage, the coercion would be indirect. But while such coercion is being exercised, it is a mockery and a contemptible thing, as the Fathers of Trent said: "If they compel [them] by threats and penalties; how much more ought it to be, which offends liberty, and induces [someone] to do that which he would otherwise not wish to do." Furthermore, a greater excommunication, such as this one, although not reserved to anyone, is not incurred without grave sin. Therefore, a slight fear is disregarded in this act, of which no account is taken in the external forum. But not only grave, but also unjust fear must be instilled; for if it were instilled for a just reason, the reason of the law would cease to apply. Hence, neither temporal lords nor magistrates would incur excommunication if they were to compel a man, even by force, to lead a girl into marriage whom he himself had defiled, with a promise of marriage. Nor would they incur excommunication if they were to deny an office or public duty to someone, to which they are not obligated by justice to confer, unless that person enters into marriage with such a person; for since they are not required by justice to confer those duties and offices, they commit nothing unjust if they deny them to an unwilling person. Likewise, those who would promise offices, money, or inheritance to someone in order to induce him to marry...

[*Latin ed. p. 646*]

262 They should be approached with solicitude; for they do not inflict harm, but rather entice. Finally, so that we may resolve all questions with a single criterion, no one is to be condemned by excommunication who denies to someone, whatever the magnitude, free benefits, unless he contracts marriage with such a person. For he commits nothing unjust; but excommunication is not incurred without guilt. But what if temporal princes or magistrates, not in order to contract marriage, but by threats and penalties, prevent someone from contracting marriage with such a person? Although some assert that such an excommunication is incurred, because they are found to violate the freedom of marriage; however, the contrary opinion

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is truer; for the Council of Trent condemns those who compel someone to contract marriage with a designated person, not those who restrain them. And since the law is penal, it is not to be extended to other cases, nor for the sake of equality of reason. This equality of reason is no longer present. For those who are compelled to contract marriage with persons not pleasing to them are forever committed to many inconveniences, penalties, and dissensions, etc.; but those who, driven by fear, refrain from a particular marriage, lack such inconveniences; for they can contract marriage with another person who is pleasing to them, and maintain a peaceful way of life. Nor is there an equal violation of freedom in either case; for he who is compelled to contract marriage is, during the marriage, deprived of his freedom; but he who is restrained can exercise his freedom with any other person who is pleasing to him, and, so to speak, the injury inflicted on freedom in this case may be momentary, and sometimes it is. It is rare that those who grieve over a lost maiden become seriously ill; and commonly, maidens acquiesce in new loves. Furthermore, let the readers remember, in the Tridentine chapter, that the discussion is about the most wealthy men and women, or those who have the hope of a great inheritance. It is not to be supposed that temporal princes and magistrates restrain someone from contracting marriage with these individuals, so that they may then contract marriage with a man and woman of lower condition, but rather the opposite. However, some doctors object, if temporal lords or magistrates restrain a subject or anyone else from such a marriage, so that he may subsequently be compelled to contract marriage with another designated person. This does not seem correct to us. For the Council of Trent condemns those who directly or indirectly compel or urge a subordinate to do something.

[*Latin ed. p. 647*]

263. Then, to compel another to enter into marriage with those whom the lords or magistrates have prescribed to him. But to compel is to induce someone, by force or injustice, to do or omit something. Therefore, in order for this excommunication to take effect, there must be direct or indirect coercion, which consists in force or injustice. But, I beg you, where is the indirect coercion in the case in question? For direct coercion has no place. Indeed, it exists only in the intention of the temporal prince or magistrate. The Fathers of Trent, however, require true coercion, that is, either physical coercion, which consists of violence properly so called, or moral coercion, which consists of grave and unjust fear. Therefore, unless coercion is applied to the effect that the subject or another, in the case in question, should subsequently take a wife of the woman prescribed by the temporal prince or magistrate, the excommunication does not apply; for the Council requires positive coercion. It is so certain that, unless positive coercion intervenes, so that the subject, in the case, etc., should take that specific woman as his wife, he is free to enter into marriage with any woman he pleases. But

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coercion is incurred by excommunication with respect to entering into marriage; therefore, since there is no coercion in the case, no excommunication is incurred. For the same reasons, and for that circumstance, we exclude from excommunication the case in which the subject would be compelled, having abandoned the first marriage, to enter into another marriage with a person not pleasing to him, having accepted the will of the temporal prince or magistrate. For, unless there were direct or indirect positive coercion on the part of the temporal prince or magistrate, the subject or another, in the case, would not be compelled to enter into marriage because of the coercion imposed in order to enter into marriage, but because of his condition, or even because he was compelled to abandon the first marriage, and would be forced to enter into marriage with a person not pleasing to him: but there is no excommunication for such coercion; therefore, if, out of necessity of his condition, he enters into a marriage against his will, the temporal prince or magistrate are not to be excommunicated, because they have applied neither positive nor indirect coercion to compel the subject or anyone else to enter into a second marriage. Indeed, who would say that the impediment imposed on the first marriage is the cause for entering into another marriage with a person not pleasing to him? But we do not know how true this is; for a man is free not to enter into another marriage: but suppose; driven by concupiscence or another motive, and if there is no other woman of his condition, which may seem incredible, he enters into marriage with one who is not pleasing to him.

[*Latin ed. p. 648*]

264 What follows from this? Indeed, this is accomplished not by force of coercion imposed, but by the motivation of their condition or circumstances; but for these reasons, there is no excommunication in the Council of Trent. Therefore, temporal princes and magistrates incur no excommunication, even though an impediment to the first marriage was the cause, or rather the occasion, since the true cause could never be; for the second marriage does not flow as an effect from the dissolution of the first. Moreover, everyone understands that, according to the Council of Trent, coercion to marriage is prohibited under excommunication; therefore, if any secular prince or magistrate were to compel someone to enter into marriage, they would incur no excommunication. Then everyone understands that this excommunication is incurred by the effect that follows. For this reason, whatever direct or indirect, physical or moral, coercions there may be, if marriage does not follow, no excommunication is incurred, because, with those burdens present, the freedom of no one in contracting marriage has been violated.

CHAPTER VII. Secular magistrates who deny assistance in restoring the enclosure of monasteries are excommunicated. The Council of Trent, in which such an excommunication is mentioned, reads as follows: Session

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XXV, concerning Regular Canons and Nuns, Chapter V. "Boniface VIII" renewed the Holy Synod, under the sanction of divine judgment and the threat of eternal damnation, commands that in all monasteries subject to him, the ordinary, and in others, by the authority of the Apostolic See, diligently restore the enclosure of monasteries where it has been violated, and where it has not been violated, to preserve it with the utmost care, compelling and punishing those who disobey and resist with other ecclesiastical censures and with any other penalties, postponing all appeals, and even invoking, if necessary, the aid of secular power for this purpose. The Holy Synod urges all Christian princes to provide this assistance, and under the penalty of excommunication, it commands all secular magistrates to do so. Above, page 237, we said that such a censure has not fallen into desuetude, as DeVarceno and Avanzini thought, but that it can hardly be observed due to the circumstances of the times. Nor can it be inferred from the fact that magistrates, when requested by a bishop to do so, do not provide assistance, or are unable to provide it, that the law of Trent should be considered to have fallen into desuetude. Indeed, contempt for ecclesiastical laws does not establish a custom in a short period of time.

[*Latin ed. p. 649*]

265 Such a custom cannot be said to have been introduced if it is clear that it is contrary to the intention of the legislator, as is clearly the case in the present situation, when Pope Pius IX renewed the law after witnessing the contempt for the government, nor are bishops to be said to have lost their right to invoke the secular arm in this matter, at least when and insofar as they are able; however, during times of revolution, ecclesiastical laws cannot be said to have fallen into disuse. For violent actions do not endure, and the Church desires to preserve its rights even when faced with revolutions. However, it acquiesces during times of restored peace, when it cannot otherwise preserve its rights intact, and to avoid greater evils, as history shows. Who, then, can claim with any semblance of truth that the Church has renounced its rights in the face of the current tumultuous circumstances? Indeed, it suffers persecution everywhere, but persecution is not the reason for losing rights, although it is the reason for suffering. We must note, however, that in Trent, the matter discussed concerns the closure of religious houses which emit solemn vows; for not every closure is papal, but this one is, and it is not imposed without the solemn profession of vows. The Fathers of Trent urge Christian princes to assist bishops in restoring or maintaining the closure of religious houses. Therefore, these [princes] incur no excommunication if they neglect this exhortation; for a grave excommunication is not incurred without a grave sin; but one is bound by law or precept, not by exhortation. On the contrary, secular magistrates are expressly commanded (1) to do so, that is, those who exercise secular or civil jurisdiction, such as provincial prefects, praetors, etc. How-

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ever, in order for these [magistrates] to incur excommunication, they must be properly empowered to assist bishops in restoring or maintaining the closure of religious houses. If, however, they are prohibited by law, as is now the case in Italy, or are prevented by some other serious reason from providing the requested assistance, or if they must suffer or fear a serious harm, they are not to be considered excommunicated; for ecclesiastical law does not impose an obligation that involves a serious burden. (1) What secular magistrates are is described in part I, Disp. II, section Q. IO, paragraphs VII, n. 4. L. Bonacina, De « Esse personas publicas, qui ff. de iurisd. omn. iud. intelligatur adverte , alias varios fuisse magistratuum Excomm. in quae ut iurisdi- hoc clarius ordines , alii enim erant magni, alii minimi et infimi, de quibus agit Bartolus, Alterius, Duardus. » In this place, all magistrates are excommunicated, those of the secular order, of whatever kind, because that term is universal and excludes no magistrate. Praetors, judges, officials of cities, and others who exercise secular jurisdiction, are subject to this excommunication, because they are included under the general name of magistrates.

[*Latin ed. p. 650*]

CHAPTER VIII. Those who compel any women whatsoever to enter a monastery are excommunicated. We read the following concerning this broad excommunication from the Fathers of Trent, Session 25, Chapter 18, concerning Religious and Nuns: "The Holy Synod places an anathema upon all and each person, of whatever quality and condition, whether clerics or laymen, secular or regular, and even those holding any office, who in any way compels a virgin or a widow, or any other woman, except in cases expressly stated by law, to enter a monastery, or to receive the habit of any religious order, or to make solemn vows, and upon those who provide counsel, assistance, or favor to such a person, and upon those who, knowing that she does not freely enter the monastery, or receive the habit, or make solemn vows, in any way hinder her from doing so, or who, by their presence or consent, or by their authority, promote such an act."

Indeed, such a decree was most holy, not only to preserve the freedom of individuals, but also the peace within monasteries. For those compelled to take vows are neither able to observe the rules, nor are they led by the spirit of gentleness and charity towards others; but rather, they are usually, if not always, a source of disturbance to the monastic peace, they deny obedience, and they demand things that are either impossible or barely permissible; finally, it sometimes happens that the superiors of monasteries are compelled, after requesting Apostolic intervention, to dismiss them.

Let us inquire: 1. Which persons are subject to this excommunication? 2. Which actions?

Regarding the first point, the law is so general that no one is excluded, whatever their status, condition, quality, or office; whether they are clerics,

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secular or cloistered, men or women. The only exception is Kings and Emperors, who are not considered excommunicated unless they are expressly so declared, as we have already demonstrated in our commentaries, and as is confirmed not only by the Piana Constitution and other sources, but also by the manner in which the Fathers of Trent acted, who, although they wished to restrain the most powerful rulers with excommunication, expressly named them with clear words; as is evident from Session 22, Chapter 11, concerning Reforms, and Session 25, Chapter 19, concerning Reforms.

Three classes of persons are subject to this excommunication:

1. Those who compel any woman, whether a virgin or otherwise, to enter a monastery, or to receive a religious habit, or to make solemn vows.

2. Those who provide counsel, assistance, or

[*Latin ed. p. 651*]

267. those who have given favor, or who cooperate in actions that are compelled. 3. Those who, knowing of the coercion, interpose their presence, consent, or authority in the entrance, reception, or profession. But coercion is understood only when either force or grave fear is present, which would affect a steadfast man; for to coerce is to induce someone, by force or grave fear, to do or omit something. Furthermore, the Fathers of Trent do not mention only physical violence, but also fear, when they say: "whatever means they may have used." Therefore, they have expressed every means by which coercion is induced and perfected; thus, not only physical violence, but also moral violence, which can be equated with violence; this equivalence is best found in grave fear. Also, whether that coercion is direct or indirect. From these things, we deduce that a slight instilling of fear does not incur excommunication, since there is no mention of it in the law, and it can be dismissed; but neither if importunate prayers, grave fear, or threats are added; nor if threats are made, if they are not unjust; for example, if someone threatens a woman with the loss of property to which she has no right; and the same is said of grave fear, which, in order to induce excommunication, must be unjust. Likewise, since in the law, any coercion properly so called incurs excommunication, any other action that is used to induce a woman to enter a monastery, etc., which does not have the nature of coercion, cannot incur excommunication: hence, he who would induce a woman to enter a monastery by persuasion, promises of gifts, or an inheritance to which she has no right, would not incur excommunication, because such actions do not have the nature of coercion. And the same must be said of deceit: for deceit, or the deception by which someone is induced to do or omit something, is not coercion, and since we are dealing with a law that is odious, the words must be taken in the strictest sense. Hence, parents who induce their daughter to enter a monastery, intending indeed to keep her there permanently, but by promising that she will

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receive an education, and that she will return to them at an opportune time, do not incur excommunication; for they are not using any coercion. However, if they were to add deceit, grave threats, and grave fear, they would not escape excommunication; for that would be coercion. Others who are subject to excommunication are the cooperators, that is, those who have provided counsel, assistance, or favor to those who are being coerced; for example, if they suggest coercion, or provide assistance in bringing it about, by keeping an unwilling woman at home, or by preventing her from making appropriate complaints to superiors.

[*Latin ed. p. 652*]

268, sive cum aliis loquatur, qui illam coactionem detestaturi essent et impedituri; vel alia exhibendo quibus coactio ad effectum facilius deduci possit. Attamen, ut alias observavimus, cooperantes excommunicatione percelluntur relate ad principalem agentem; et favor, innuere debet in vetitam actionem; hinc si principalis actio ad effectum deducta non sit, vel praestitus favor nullo pacto in vetitam actionem influxerit, cooperantes excommunicationem non contrahunt; quorum manifesta est ratio; cum enim excommunicatio haec incurratur effectu secuto, actiones enim prohibitae factum completum indicant, ingressum in monasterium, habitus susceptionem, professionem religiosam, ni actio principalis ad effectum deducta sit, excommunicatione non feritur; at inepte dicerentur excommunicati agentes secundarii, quando principalis agens ob eamdem actionem excommunicatus non est; quae de cetero actio in casu neque existit. Quod ipsum de praestito favore dicendum est; nisi enim favor in actionem influxerit, favens in vetitam actionem nihil contulit. Sed faventes ideo excommunicantur quia praestito favore in vetitam actionem contulerunt; ergo non possunt in casu excommunicati proclamari. Hinc si post quam cogentes omnia disposuerint, ut mulier monasterium ingrediatur, vel habitum suscipiat, vel professionem emittat, sint qui eiusmodi factum laudent, probentque, aliaque dicant faciantque quae ipsorum adhaesionem demonstrent; cum hae actiones nihil in factum influxerit, quia executioni fuisset demandatum etiam sine eiusmodi favore, faventes hi excommunicationem non contrahunt. Tertio demum excommunicantur, qui scientes mulierem non sponte ingredi monasterium, aut habitum suscipere, aut professionem emittere, quoquo modo eidem actui vel praesentiam, vel consensum, vel auctoritatem inter posuerint. Ut igitur hi postremi excommunicationem incurrant requiritur ut cognoscant, mulierem non sponte monasterium ingredi, aut habitum suscipere aut professionem emittere; si igitur id eos lateat, facto suo nullam excommunicationem contrahunt, cum nulla habeatur formalis transgressio legis, nullumque peccatum. At cum in eiusmodi scientia non exigatur a legislatore praesumptio, hinc ob ignorantiam affectatam excommunicatione non excusatur, quamvis alia qualibet excusetur

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ignorantia. 2. At scientes huiusmodi vetito actui praesentiam suam exhibere debent, id est, illi assistere; ergo qui vel devotione, vel curiositate, amicitia, consanguineitate assistunt, nihil de mulieris repugnantia scientes, nulla excommunicatione plectuntur; multoque minus excommunicati censentur illi qui praesentiam exhibent impediendi causa.

268. Those who, by their actions, compel a woman to enter a monastery, or to receive the habit, or to make religious vows, incur excommunication, whether they do so directly, or through others who would detest and oppose such coercion; or whether they employ other means by which such coercion can more easily be brought to fruition. However, as we have observed previously, those who cooperate with excommunication are subject to it in relation to the principal agent; and their favor must indicate approval of the prohibited action. Therefore, if the principal action is not brought to completion, or if the favor rendered in no way contributes to the prohibited action, those who cooperate do not incur excommunication; the reason for this is evident: for excommunication is incurred through the effect produced; and actions that are prohibited indicate the completion of the act. Thus, if a woman does not freely enter a monastery, or receive the habit, or make religious vows, but is compelled to do so, then excommunication is not incurred; for it would be absurd to say that secondary agents are excommunicated when the principal agent, for the same action, is not excommunicated; and such an action does not even exist in that case. The same must be said of the rendering of favor; unless the favor contributes to the action, the one who renders the favor has contributed nothing to the prohibited action. But those who render favor are excommunicated because they have contributed to the prohibited action; therefore, they cannot be declared excommunicated in this case. Therefore, if, after those who are compelling have arranged everything so that a woman enters a monastery, or receives the habit, or makes religious vows, there are those who praise such an act, approve of it, and say or do other things that demonstrate their support; and if these actions have no effect, because the execution would have been demanded even without such support, then those who offer such support do not incur excommunication. Thirdly, those are excommunicated who, knowing that a woman is not freely entering a monastery, or receiving the habit, or making religious vows, in some way place themselves between her and such an act, whether through their presence, consent, or authority. Therefore, in order for these latter to incur excommunication, it is required that they know that the woman is not freely entering the monastery, or receiving the habit, or making religious vows; if this is unknown to them, then their actions do not incur excommunication, since there is no formal transgression of the law, nor any sin. But since the legislator does not require such knowledge, those who are ignorant of this are not excused from excommunication by reason of their ignorance, although they may be excused from it by any other kind of ignorance. 2.

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But those who are aware of such a prohibited act must manifest their presence, that is, they must assist; therefore, those who assist out of devotion, or curiosity, or friendship, or kinship, knowing nothing of the woman's reluctance, are not subject to any excommunication; much less are those considered excommunicated who manifest their presence for the purpose of preventing it.

[*Latin ed. p. 653*]

269 in order that the prohibited act may not be completed, or that they may bear witness to the violence used. But certainly, the superiors of monasteries and religious houses incur this penalty if, knowing of a woman's resistance, they nevertheless consent to her entering, or to her receiving the habit, or to her making vows. Then the Bishop, the General Vicar, or the superiors of the religious order itself, who, by their authority, cause the prohibited act to be carried out, incur the same penalty. In Bonacina, *De excommunicationibus*, part I, Disp. II, Quest. H, Punct. II, n. 10, the question arises: whether parents incur excommunication by compelling their daughters to engage in prohibited acts. This opinion was established because some authors, as cited by Azorín, book 2, chapter 21, question 15, excused parents from excommunication for this reason, because it is not likely that this penalty was established against parents, upon whom rests the duty of caring for the salvation, life, and well-being of their children. However, Bonacina, and others, both ancient and modern, rightly reject this opinion; first, because the words of the Council of Trent admit of no exception, since they are entirely general; second, because there are parents who compel their daughters to enter monasteries, often for the sake of avarice; if, therefore, the Fathers of Trent had excluded these parents from excommunication, who would they have excluded? Finally, the reason given is completely untenable: for it is by no means likely that those should be excluded from the law who the law does not exclude, but whom, if it had excluded, it would have had to mention explicitly, since there are parents who frequently commit such a crime; and there is no connection between the crime of the parents and the reason given. Does the fact that parents have the duty of caring for the salvation, life, and well-being of their children in any way imply that they should be excused if they compel their daughters to enter a monastery? On the contrary, the opposite seems to follow; for since parents have that duty, they should not compel their daughters to enter monasteries against their will, since by compelling them, they bring about for them the most unhappy course of life; for it is known that girls lead such a burdensome life, agitated by anxieties, spurred on by the dictates of conscience, and burdened with sins, so that such parents endanger not only the temporal, but also the eternal salvation of their daughters; they are therefore deserving of censure, not in one respect, but in many. It is clear that they are not deserving of excuse

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if they try to compel their daughters to enter monasteries, in order to make them greater in appearance, and to preserve their wealth; for in doing so, they would act with the utmost injustice, since they are obligated to give to their daughters what is just, according to the state to which each is called, to which each is called by the will of God. II. From what has been said, we believe it is clear that there is a threefold action that incurs excommunication.

[*Latin ed. p. 654*]

270. Regarding coercion: namely, whether it is permissible to compel a woman to enter a monastery, or to receive the habit, or to make vows. But concerning entry, the question is asked: whether it is necessary to incur excommunication to compel a woman who is unwilling to enter a monastery with the intention that she subsequently make religious vows, or whether it is sufficient to compel her for any reason whatsoever? Indeed, the doctors disagree: Suarez, *Disputationes*, 23, section 7, number 9, and Filiuccio, *Tractatus*, 14, chapter 6, question 5, number 89, assert that those who compel a woman to enter a monastery incur excommunication, even if they compel her for the sake of receiving a civil and Christian education. On the contrary, Rodriguez, Sanchez, whom Bonacina cites in the aforementioned place, number 6, contend that the coercion of a woman who is unwilling to enter a monastery does not incur excommunication, unless it is in order to make religious vows. Thus, Bonacina states: "First, it is about entering the monastery," which "I understand to mean" by way of preparation for vows; "for the Council seems to have consulted the freedom of religion; therefore, if fear is aroused for another purpose, such as if a woman is compelled to enter the monastery by fear, in order to be educated there until (1) she is fit for marriage, excommunication does not seem to be incurred in this case." Thus, Rodriguez in *Summa*, 2 part, chapter 8, conclusion 5, number 10, and Sanchez in the aforementioned place, that is, in *Opera Moralia*, 6, 4, number 12. Although, in this case, Suarez and Filiuccius, etc., hold the opposite opinion, namely, that a woman is compelled by force or fear to enter a monastery in order to be educated. It does not matter that the Council speaks simply and absolutely about entering the monastery. The intention of the Council can be gathered from the subject matter discussed in that section. This opinion of Bonacina is called reasonable by De Varceno in *Theologia Moralis*, Thomas II, page 517, number 4, and he embraces it. However, it is better to hear St. Alphonsus, who in Book VII, number 212, of both parts, expresses the opinion in these words: "Do those incur [this excommunication] who compel a woman to enter the monastery, not in order that she may make vows, nor in order that she may receive the habit, but in order that she may be educated there?" Suarez... Navarrus... Bonacina (1)... Filiuccio affirm this. This is based on the Council of Trent, Session 25, chapter 18, concerning Regular Canons, where those who have

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compelled any virgin, or widow, or any other woman, unwillingly (except in certain cases) are excommunicated. As for Bonacina, it is false, as is evident from the testimony cited above.

[*Latin ed. p. 655*]

271 » (in matters expressly stipulated) to enter » not to enter the monastery of one's own free will » while entering the monastery, or to re- » (note) or to receive the habit, or » ceive a habit of any kind » to make a profession; in any case, » of a religious order, or to make a pro- » by this act, or by being present, » fession. Therefore, the Council » or by giving consent, or by having » here distinguishes three elements, and » authority interposed. Therefore, from » inflicts censure on all those who com- » this, a significant part of the meaning » pel women, whether to enter a mon- » is understood; just as in this second » astery, or to receive a habit, or to » part, three elements are distinguished, » make a profession; for the Council » as they are condemned for giving » of Trent decreed that, on the oc- » consent to the coerced act in three » casion of entering, a woman should » cases; namely, when a woman, either » not be compelled to receive a habit, » by entering a monastery, or by re- » or to make a profession, either be- » ceiving a habit, or by making a pro- » cause of the persuasion of the mon- » fession; so also, the first part must » ics, or out of shame for leaving. » be understood with regard to the prin- » However, Sánchez and Manuel con- » cipal elements. However, since the » tend that, because in the aforementioned » Council of Trent seems to contain » sanction of Trent, there appear to » not three, but two elements, it is » be probable that Suarez and Bonae, » likely that a woman can be lawfully » with Filliuc, can compel a delin- » forced to enter in order to atone » quent to enter, or to commit some » for her crime, or to avoid some in- » incontinence, as is indicated by C. » decency, as C. Gaudeamus de conver- » sus coniug. » » But how should we choose between » these opinions, or which should be » considered probable? » First of all, since we believe that » St. Alphonsus is correct, in the » Tridentine chapter on the threefold » act, there is a clearly distinct ac- » tion, namely, either to enter a mon- » astery, or to receive a habit, or to » make a religious profession. The » context of the chapter, and the plu- » rality of words, seem to refute the » opinion most strongly defended by » Sánchez.

[*Latin ed. p. 656*]

272 Furthermore, as we firmly maintain, in the Tridentine Decrees, concerning entrance [into religious orders], it is not the case that we are speaking of young girls who, although unwilling, are compelled by their parents to enter a monastery in order to receive a Christian education, or to be freed from dangers that threaten the weaker sex, or because, due to the death of their mother, or some other circumstance, they cannot be safely kept

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at home, or cannot receive a suitable education. We believe that parents have the right to place their daughters in institutions where they believe they will receive a more suitable and secure education; and it is not for the daughters to choose the place of their education. Since the Church permits girls to be educated in monasteries, and it is the duty of parents to provide for the education of their children, we certainly do not believe that they incur excommunication if, with due preparation, they compel their daughters, even unwillingly, to enter a monastery for that purpose, in order that, at an opportune time, they may be returned home. Indeed, we maintain that there is no mention of such a case in the Tridentine Decrees, and perhaps there could not be; otherwise, the Fathers of Trent would seem to have harmed the authority of parents. Moreover, we add that among the conditions required for girls to be admitted to monasteries for the purpose of receiving an education, there is absolutely none that refers to their own will; that is, it is not stated that they should be questioned as to whether they freely and willingly enter the monastery, as is clear from Lucio Ferraris, V. Moniales, Art. 1, n. 2 to 30. If the laws do not prescribe this, how can parents be blamed if they compel them to enter? Furthermore, in such a case, parents do no harm to the Monastery to which they force their daughters to enter, nor do they commit any sin themselves, since they are absolutely providing for the spiritual and civil well-being of their daughters; therefore, why would we call them excommunicated? Nevertheless, we do not accept the opinion of those who say that, in order to incur excommunication for the reason of coercion to enter a monastery, it is necessary for those who are compelling to have the intention that the virgin or woman compelled should take a vow. Indeed, the Fathers of Trent not only forbade the coercion of virgins, but also of widows, and of any other women; and since this wording is completely general, it excludes no one, but includes everyone of any age, status, and condition; all the more so because they add "or any other woman unwilling," which clearly means that this woman is neither a virgin nor a widow, but perhaps a married woman, or one who has been corrupted, and is advanced in years. But it is clear that not all women can take religious vows. Therefore, the intention of the Fathers of Trent was not, with a view to taking a religious vow...

[*Latin ed. p. 657*]

273. Those who, in order to admit someone to a monastery, compel unwilling women, do so not only for this reason, but also for others. This is confirmed by the fact that the Fathers of Trent permit coercion in certain cases, as established by law. Among these cases is that of a married woman who is an adulteress, whom her husband does not wish to keep, and who is compelled to enter a monastery in order to perform perpetual penance there. However, besides such adulterous women, there are certainly other women who can be compelled to enter a monastery, but who may not be

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able to make a religious profession; and the Council does not wish to compel these women. Therefore, it could not have excommunicated those who, with the sole intention of forcing a woman to make a religious profession, compel her to enter a monastery. We therefore say that the Fathers of Trent excommunicated those who, for example, force their daughters, sisters, or relatives to enter a monastery, in order to preserve their own possessions and to become richer from their revenues; and also those who compel them to do so, so that they may live a licentious life at home, without enduring the reproaches of pious sisters, or other religious. Furthermore, they excommunicated those guardians who force virgins, whose care they have undertaken and whose proper education they could otherwise provide, to enter monasteries against their will, and to absolve themselves of the responsibility for their care, so that they may live as they please at home, or for other reasons. It does not seem true that the Fathers of Trent had solely in mind the freedom of religious profession in the aforementioned chapter; for it is clear that this is false, as it appears from the reasons given, from which it is clear that they did not forbid the compulsion of women to enter monasteries solely for the sake of religious profession; it is also clear from the fact that a threefold action is distinctly prohibited: namely, entry, the reception of the habit, and the religious profession, none of which necessarily follows from the others. Finally, it is clear that not only the freedom of religious profession in unwilling women must be considered, but also, and indeed most importantly, the peace of the monastery and the piety of the religious. For it is clear that such women, when confined in monasteries, are led by no piety whatsoever, do not guard their tongues, are absorbed in worldly matters, are easily angered, indulge in detractions, and engage in other behaviors that are unbecoming; indeed, it sometimes happens that they become mentally disturbed. Thus, they cause scandal to the religious, or lose their peace of mind, and are sometimes even severely reprimanded. But the Fathers of Trent certainly considered these inconveniences; therefore, they were not solely motivated by a love for the freedom of religious profession when they excommunicated those who compel unwilling women to enter a monastery. We agree with the opinion of St. Alphonsus for this reason: this excommunication also...

[*Latin ed. p. 658*]

274. We believe that those who compel a woman to enter a monastery against her will, even without her consent, also incur a penalty when they force her to make a religious profession. However, there is no doubt that those who force a virgin, a widow, or any other woman, unwilling to receive the habit of any religion, or to make a religious profession, incur excommunication. Nevertheless, these words, "of any religion," have given rise to inquiry among commentators and theologians: does this excommunication also apply to acts of coercion regarding entrance, the reception of

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the habit, and the profession in any religious family, for example, a congregation in which simple vows are taken, or is it required that these three actions be performed in a religious order properly so-called, in which solemn vows are solemnly pronounced? Indeed, Father de Varceno, in the aforementioned passage, page 517, writes: "This excommunication takes place even when it concerns a religion in which perpetual simple vows are taken." For the Council intended to ensure "free entrance into the monastery, or the reception of the habit of any religion, as is stated in the Decree." The reason is that "the purpose of the Council is nothing other than that a woman freely, and not by force, embrace the religious state." However, we believe that the opposite opinion is much more likely to be true. It is certain that, by the name of religion, religious orders of solemn vows are to be understood, as we have demonstrated with numerous arguments in the first volume of our commentary. But the Council of Trent, when using the word "religion," clearly refers to those who take solemn vows; therefore, it should not be extended to other pious societies that do not pronounce solemn vows. We do not believe that there is any difficulty in the fact that the Fathers of Trent say "habit of any religion"; for such a statement is true, even though it is restricted to orders in which solemn vows are taken, since in reality there are many such orders or religious congregations. However, if coercion regarding entrance into a monastery, or the reception of the habit, or the making of a religious profession, is subject to excommunication, it will not be inappropriate to ask: does one who commits these three actions with respect to the same person incur a triple excommunication? On this matter, Gibellini writes in his *Disquisitiones Canonicae de clausura regulari*, Disq. 1, Cap. VII, n. 10: "Because it seems to be one continuous coercion, Suarez believes that a single censure is incurred, which is contracted by the first action, and then increased by the subsequent actions, just as contumacy itself is." But the most excellent author...

[*Latin ed. p. 659*]

275. From the *Nouvelle Revue Théologique*, Volume XVII, page 4B, as well as from the esteemed Father Piato of Mons, in his *Commentarius in Constitutionem Apostolicae Sedis*, page 283, such a solution does not seem appropriate, precisely because each act incurs excommunication; and this reasoning should be rejected. However, it seems possible to reconcile both opinions if we make the following distinction. If the person compelling [the woman] had the intention, even before entering, of forcing her into a religious profession, or not: if the former, we believe that he incurs one excommunication, because entrance and the acceptance of the habit are means to achieving the end, and therefore this threefold action seems to constitute one, since the end cannot be achieved without means. If the latter, since the action is different, and not intentionally ordered to

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the other, he incurs excommunication for each individual action. However, since the compulsion to accept the habit is ordered towards the religious profession, which the person compelling intends after entrance, while we believe that he incurs a new excommunication for the compulsion to accept the habit, we do not believe that he incurs another for the compulsion to make the profession, because the compulsion to accept the habit and to make the religious profession are to be considered as one action, since one is a means to the other, and furthermore, the person compelling perseveres in his intention. However, we submit this to the judgment of our readers: After these considerations, we believe that it is clear that: first, the person who forces a woman to break a vow of a religious profession does not incur excommunication, because the Council speaks of compulsion to a real entrance into a monastery, the acceptance of the habit, or the profession. Second, neither does he incur excommunication who compels not a woman, but a man, to the aforementioned [actions]; because the Fathers of Trent speak of women, not of men; and since the law is odious, it cannot be extended to other cases, nor for reasons of equality. We also consider it necessary to point out that this excommunication is incurred only if the effect is achieved. Finally, it remains to explain the cases in law that are excepted, in which a woman can be compelled to enter a monastery without incurring any excommunication. The first is included in Chapter [referring to] "Significavit De conversione coniugarum," in which a wife who has given her consent for her husband to make a solemn profession of vows in a religious order, raises suspicion about her own chastity. Innocent III, therefore, decreed: "We command that, if this is the case, and if she is of such an age that suspicion cannot be raised about her, she observe the vow of continence, and enter a monastery..."

[*Latin ed. p. 660*]

276. "Let no one compel a woman to enter [a religious order] against her will." Thus, the Glossa states in its interpretation. "For it says: concerning which suspicion cannot be held, she should not be compelled; it is understood that if she is suspected, she ought to be compelled to enter [a religious order] from which she has promised continence." Another case is contained in Chapter 19 of the Decree on the Conversion of Married Couples, where Gregory IX established: "But a heretic woman, who, having abandoned the marriage bed, has upon carnal sin, if her husband, having been diligently admonished by you, will not receive her back for the sake of God, you should strive to place her with religious women, so that she may perform perpetual penance there." These provisions of the law concern only entry into a monastery, and not the acceptance of novices, nor the religious profession itself. Therefore, whoever would compel these women to either [of those things] would incur the excommunication of Trent. Finally, this excommunication is declared to be not reserved to anyone. CHAPTER

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IX. Concerning the excommunication imposed by the Fathers of Trent on those who prevent a virgin or another woman from receiving the veil, or from making a religious profession. In the same Session XXV, concerning Regular Canons and Nuns, in the same Chapter XVIII, the Fathers of Trent pronounce the following censure: "And those who, in any way, without just cause, hinder the will of virgins or other women to receive the veil, or to make a vow, are subjected to the same anathema." But if the same anathema is [imposed], then it is with the anathema discussed in the preceding chapter, which is not reserved to anyone, and this is clearly recognized as not being reserved to anyone. Before we begin to discuss the matter and subject of this chapter, it must be declared what the Fathers of Trent understood by the words "to receive the veil, or to make a vow," whether they intended to signify a religious profession, or whether, by the preceding words, they meant the acceptance of novices, commonly called the wearing of the habit, and by other words, they properly meant the religious profession itself. Among the ancients, Bonacina, in *De Exc.*, part 1, Disputation II, Question II, Point III, n. 2, affirms that, by the words cited, the Fathers of Trent understood "the profession that is made through the acceptance of the habit, or even without the habit, with the three vows." And to support his opinion, he cites Suarez, *Disput.* 23, Sect. 7, n. 9, and Filliuccio, *Tract.* 14, Cap. 6, question 5, ad fin. n. 90. And in n. 4, he makes his meaning clearer: "Therefore," he says, "that particle, 'to make a vow,' seems to be added to comprehend every kind of [religious state], whether it be through..."

[*Latin ed. p. 661*]

Among the nuns, some make their profession through the reception of the veil, while others assume that state without the reception of the veil, as Suarez, Filliuccius, and Sanchez teach. Commentators on the Apostolic Constitution hold this view, and affirm that the words of Trent mean only one thing: to make a profession. Thus, the most learned writers in the *Nouvelle Revue Théologique*, Volume XVII, page 49, note IV; the Patavinus commentator, page 305, note 419, III; Gabriel de Varceno, in his *Compendium Theologiae Moralis*, page 518, 9; and F. Piatus, in his commentary, page 285, 3, all write, although the latter cautiously: "By the term 'veil,' some understand either entrance into the monastery with the intention of embracing the religious state, or the reception of the habit and the making of a profession. However, the authors generally agree that these terms refer to the same thing, namely, a declaration of religious intent, which, in some orders of nuns, is made through the reception of the veil, while in others, it is made solely through the taking of vows." And this is also the opinion of others, and it is the only reason, if one or the other is accepted. But let us not presume to contradict the opinions of so many learned doctors. We submit our reasons and arguments to the judgment of our readers, and

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we believe that they should be set aside in favor of the opinion we have presented, and conversely, we affirm that the Fathers of Trent intended to indicate, by the reception of the veil, the reception of the religious habit, or clothing; and by the taking of a vow, the proper religious profession. And first, we are not mistaken if the intention of the Fathers of Trent was to prohibit, by a wide anathema, that no one should be unjustly removed from religious profession; but since this end is common not only to religious profession, but also to the will to receive the habit, and indeed to enter the monastery, no argument can be drawn from this to support the contrary opinion. Therefore, the argument should not be sought from the end of the law, but from elsewhere; and indeed: 1. From the manner of speaking. It is clear that the Fathers of Trent used a certain way of speaking in order to designate two completely different things: the will to receive the veil, or to take a vow. But the word "vel" is not a connective, nor is it used absolutely to indicate one and the same thing, but rather something distinct and different. Indeed, even when used absolutely, it joins distinct things, as is clear from Virgil, *Aeneid*, V, verse 769: "Silvius, Aeneas, equally outstanding in piety or in arms." And from Livy, *Histories*, Book 1, chapter 42: "He described this order as either suitable for peace or for war." 2. It is certain that the Council...

[*Latin ed. p. 662*]

278 At the time of Trent, receiving the veil and making vows were commonly understood to be two distinct religious acts, since the assumption of the veil usually preceded the making of vows, as we shall see below. However, it is not to be thought that the Fathers of Trent deviated from the common usage of language, so that they did not in some way indicate this. 3. And this is even more so, because in other chapters, when they speak of making vows, they use the term "profession," but we have found that they used the term "veil" only in the cited passage; but it is certain that the making of vows can be equated with religious profession, but not with the assumption of the veil, which term also signifies other acts. 4. This last point is most clearly evident from what is written by Schmalzgrueber – *Ius Ecclesiasticum Universum*, Part IV, On the Status of Monks, Title XXXV, n. 96. Namely: "Concerning the blessing or 'consecration' of nuns, it is customary for them to be given several veils: 1. the veil of conversion or probation, which is given at the reception of the habit of the religious order before profession, and is commonly white; 2. the veil of profession, which is black; 3. the veil of consecration; 4. the veil of continence and obedience, which is that of widows, and can also be given to virgins, although the virginal veil cannot be given to widows, not even with the dispensation of the Bishop; 5. the veil of ordination, which was formerly given to deaconesses for the beginning of their divine office; 6. the veil of preeminence, which was formerly given to abbesses at the age of sixty." Therefore, since

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the assumption of the veil signifies so many different things, of which religious profession expresses only once, how can we reasonably think that the Fathers of Trent intended to indicate religious profession solely by the assumption of the veil? We add that there are two things in canon law by which the Fathers of Trent should have been deterred from indicating religious profession by the assumption of the veil; one is that, in reality, the assumption of the veil expressed the assumption of the habit, by which the woman was not considered a religious, while she truly and properly became a religious through religious profession. This is evident from Chapter XIV, *De Conversione coniug.*, Title XXII, in which Innocent III, writing to the Archbishop of Lyons, decrees the following: "Moreover, although the aforementioned woman may seem to have assumed the habit of religion by the reception of the veil, if, however, she wishes to remain in her own house, preserving the purpose of chastity in the world, the already contracted marriage must nevertheless be consummated; unless she has bound herself by a vow to observe the rule; in which case she can be compelled to leave it."

[*Latin ed. p. 663*]

279. "The purpose of religion must be pursued." From this, it is clear that a woman may appear to be religious through the wearing of a veil, but this does not make her a religious, nor can she be compelled to take vows if she has not previously bound herself to that commitment; therefore, the reception of the habit, or veil, does not indicate a religious profession, and cannot be equated with it. Hence, the Glossa rightly states in this passage: "and this is" an argument that "the reception of the veil or habit does not make one a religious." We also add that in the ancient canons, the matter itself always indicates whether the assumption of the veil signifies the reception of the habit, or clothing, or a religious profession, or other acts, as is evident from the various canons cited by Gratian, Causes XX, T. i. However, the Fathers of Trent, in a matter of such importance, in which, indeed, the incurrence of excommunication was being considered, made absolutely no distinction; which should be considered improper. Something else was prohibited, namely, that a profession could not be made unless it was preceded by a year of novitiate in the religious habit; which the Fathers of Trent themselves confirmed in Session XXV, Chapter XV, concerning Religious and Nuns, with these words: "In every religion, both of men and women, a profession is not made before the tenth year is completed, nor is anyone admitted to a profession who has not stood in probation for less than a year after the reception of the habit. A profession made before this time is null and void, and produces no obligation to observe any rule or religious order, or to any other effect whatsoever." Therefore, since the Fathers of Trent so clearly distinguished between the reception of the habit and a religious profession, and since the reception of the habit without the assumption of

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the veil does not occur, as we have explained from Schmalzgrueber above, and since the assumption of the veil is called, as is stated in Innocent III, a matter that could not be confused or designated by words that signify different and distinct acts. Therefore, to put it mildly, the words of the Council of Trent cannot in any way prove that the intention of taking a vow of the veil signifies either the reception of the habit or a religious profession. Nor do we consider the argument presented by the opposing side to be sound. For they claim that the Council of Trent's words designate a single profession; because this sometimes occurs through the reception of the veil, and sometimes through the mere emission of vows. However, this interpretation is not entirely in accordance with common usage, since the words used by the Fathers of Trent could signify two distinct and different acts, which are indeed found in the religious state. 2. They should prove that...

[*Latin ed. p. 664*]

280. In Council of Trent, it was determined that the veil should be assumed only for the purpose of taking religious vows. If it were also assumed in dress, then what? Our opponents will never be able to demonstrate this, unless they first prove that, during the time of the Council of Trent, the veil was never assumed in any religious order except for the purpose of taking vows, so that the profession is equated with the reception of the veil; which we do not know if they can prove, since it contradicts historical truth. 3. Moreover, what if we were to present the argument in this way? Commonly, the assumption of the veil is called the "clothing," and the taking of vows is called the "profession." But the Fathers of Trent, indeed, used both phrases separately; and they are to be understood as having used the former in accordance with the common meaning; therefore, we believe that the Fathers of Trent, through the words they used, indicated both the "clothing" and the "religious profession," and not just the "profession" alone. 4. If the Fathers of Trent had intended to indicate only the religious profession, would it not have been sufficient to indicate it through the will of making vows? For, according to our opponents, the will to receive the veil is nothing other than the profession. Therefore, for what reason did they add the will to receive the veil, which, in the hypothesis of our opponents, means absolutely nothing, since the same thing is expressed identically through the will of making vows? Is it to avoid ambiguity, and to raise questions? Hence, and with the permission of our opponents, we do not see how the words of Trent can be limited and restricted to only one religious profession; we affirm the contrary, and we believe that it is sufficiently clear, from the reasons presented, that the Fathers of Trent, through the words they used, indicated both the "clothing" and the "religious profession." After these things, it is now clear what is the subject matter of this chapter, namely, to prevent a suitable woman,

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either by herself or by others, either physically or morally, from receiving the religious habit, or from making religious vows, separately, not jointly. Since the subject matter is odious, and odium must be restrained, the words of Trent must be understood in a strict sense; namely, concerning only one impediment, whether it be the habit, or the religious profession of virgins, and other women who wish to undertake these actions, and not concerning other religious actions. Therefore, 1. we do not believe the opinion of those who subject to excommunication even those who prevent virgins, and other women, from entering a monastery; for these do not prevent the sacred reception of the veil, or the profession, but the entrance into the monastery; and the penal law cannot be extended from case to case, nor because of the identity of reason.

[*Latin ed. p. 665*]

281. Indeed, we shall not be infected by the opinion that those excommunicated in the Tridentine Council are those who, in some way, hinder the reception of the habit or the emission of vows. However, we believe that the adverb "in some way" refers immediately to the habit and the profession, and implies that those virgin women who have already entered a monastery are prohibited from receiving the religious habit, or, if they have already received the habit, from making a religious profession; but, intrinsically, we believe that the adverb "in some way" signifies various means and aids by which the aforementioned religious acts are prohibited or hindered. For if we understand the adverb "in some way" even mediately, that is, in relation to other acts that precede the reception of the religious habit, for example, the request to enter the monastery, or the intention to manifest to the superior of the monastery the will to dedicate oneself to God through a religious profession, or if we extend its meaning too far, to all things that can turn away the will of virgin women or of those who wish to receive the sacred veil, or who pronounce solemn vows, even those who, through prayers, persuasions, and other means that do not properly involve the nature of an impediment, prevent any woman from performing the aforementioned religious acts, would be subject to excommunication, which our adversaries do not admit. Therefore, we believe that in such a matter, one must never depart from the natural and proper meaning of the word "to hinder," which means: to oppose, or to place obstacles so that someone cannot attain what is just and lawful; and therefore, it implies some action, whether violent, or imperative arising from the authority under which one presides, or deceitful, from which an impediment arises, that is, the act by which a woman is either unable or unwilling to proceed, because, being deceived, she believes that she should withdraw from the undertaking she has undertaken. We shall illustrate the matter with examples. A father does not want his daughter, whom he has placed in a monastery for the purpose of education, to receive the religious

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habit, and he makes his will known to his daughter; but she vehemently refuses, and remains firm in her undertaking; when she is younger, the father, relying on his authority of governance, removes the daughter from the monastery. This is a violent action by which the reception of the religious habit is hindered. But another father believes that he should act more gently. Therefore, since he absolutely does not want his daughter to wear the religious habit, he calls her to him, and the father advises her to consider the matter more carefully, saying that it is better for her to leave the monastery, even for the sake of acquiring better health, and before God, he promises that he will again place her in the monastery, and that he will not, by any means, prevent her from wearing the religious habit, if she—

[*Latin ed. p. 666*]

282. Let the one who recognizes that her vocation is from God, and who perseveres in her chosen course, swear that she will faithfully observe all that she promises. The daughter shows obedience to her father; but scarcely has she left the monastery when she is sent to foreign lands, and no fidelity is shown to her in her firm resolve concerning her vocation. This action, before her departure from the monastery, is deceitful; after her departure, it is violent, as it imposes constraint upon the daughter's freedom; and this deceitful action prevented the daughter from putting on the religious habit. Another father, more astute than others, in order to dissuade his daughter from her chosen course, calls to himself a physician, a man whom he is closely connected to by friendship and by shared views on religion, and reveals everything to him, begging him to go to the monastery, ostensibly to visit the girl who is suffering from a slight headache, but in reality to effect what he desires. The physician goes to the monastery and visits the girl with great care; then, having summoned the Abbess and other women who are in charge of the monastery, he warns them in secret that the girl is suffering from some illness that absolutely prevents her from embracing and living the monastic life; that in reality, she has always suffered more or less from this illness, but that now it is increasing, and that if she continues to remain in the monastery, she will soon reach a state in which she will completely lose her health. Therefore, it is absolutely necessary that she leave the monastery. The superiors of the monastery show every possible deference to the physician, and they urge the girl to leave the monastery. In this action, there is no violence, but only the most shameful deceit, which, nevertheless, is the cause of the impediment imposed. A certain temporal prince, with a very strong affection for a girl living in the monastery, knows that she desires to embrace the religious life. In order to prevent this, he threatens the monastery with his wrath if the girl is admitted to take the habit or to make her profession. The superiors of the monastery, struck with great fear, willingly dismiss the girl. Such an impediment originates from a grave and unjust fear that has been instilled. Finally, the niece of a

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Bishop and Ordinary of a monastery wishes to embrace the monastic state. The Bishop knows that she is being courted in marriage by a very noble and wealthy young man; and, more concerned with worldly matters than with those of God, he tries to dissuade his niece from her initial intention of making her profession. He approaches her, and asks her questions about her vocation, about the state of her conscience, about various temptations; and finally, he concludes that his niece's vocation is not from God, and that she should not embrace the monastic state, but rather should turn to a secular life; and that this is, moreover, the will of God, to which she must absolutely conform. The girl shows obedience to her uncle and to the Bishop, and does not utter any sacrilegious falsehood.

[*Latin ed. p. 667*]

28. Now, she is merely suspected, and she leaves the monastery. In this act, there is no violence, but only the worst deceit, and a most shameful lie, which prevents the girl from entering religious life. From these things, we infer that the essence of such an impediment is neither violence, nor threats, nor grave fear, and that it can perfectly exist without these; therefore, it is required that the action actually placed should truly impede, or be the efficient cause of the impediment. Consequently, it follows that actions or means employed which cannot be considered as the efficient cause cannot constitute, nor be considered as, an impediment. Therefore, importunate prayers, or certain threats that proceed from a very ardent, but too carnal, love of parents, although they may have produced an effect, namely, to draw the girl back from receiving the habit or from making a religious profession, cannot be considered as an impediment; because it is not from these, but from the will of the girl, that what has ceased must be withdrawn, and a message sent to her vocation; and the same judgment must be rendered concerning it as concerning a slight fear. We have explained these matters somewhat more fully, lest error should creep in, and lest we should condemn as excommunicated those who have incurred no excommunication; moreover, to demonstrate that the adverb "in any way" can never be extended beyond the signification of a properly called impediment, which is, namely, the efficient and proximate cause by which a woman is prevented from receiving the habit, or from making a religious profession; finally, lest anyone should think that violence or, at the very least, grave fear are necessary for an impediment.

2. For the same reason, he is not to be considered excommunicated who would prevent a man from receiving the habit or from making a religious profession; for the law speaks of women.

3. Likewise, he would avoid excommunication who would prevent a woman from accepting the habit, or from making a vow in some Congregation—in which only simple vows are pronounced—; indeed, in the true and proper sense, as we have demonstrated in our other

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commentaries, Religion and religious profession are always understood of those religious Institutes in which vows are solemnly pronounced; and in the chapter of the Council of Trent cited above, such terms are absolutely placed there; we add that at the time of the Council of Trent, there were either no such religions, or very few Congregations of simple vows.

4. Much less would he incur excommunication who would prevent a woman from making a vow, whether it be the vow of entering a monastery, or of receiving the habit, or even of making profession.

[*Latin ed. p. 668*]

284. For the law prohibits the impediment brought about to the habit and profession, not the vow of wearing the habit. 5. Consequently, for the reasons stated above, we cannot accept the opinion defended by the Reverend Father De Yarceno, who asserts that a father incurs excommunication if he denies his minor daughter, without just cause, permission to enter a monastery, because, as he writes in *Compendium Theologiae Moralis*, Volume H, page 519, "he effectively prevents the daughter from enjoying the disposition of the Council of Trent," namely, "even in her minority, entering a monastery." Indeed, the law of Trent does not speak of impediments to entering a monastery in any way, but of the acceptance of the habit or the religious profession; nor should the adverb "in any way" be separated from the object to which it refers, namely, from an unjust impediment to either religious act. Otherwise, the odious law would be extended to other cases, which is unacceptable. 6. We cannot likewise agree with the response that the same author gives to the following question: C). "Do parents who can pay the dowry, and who refuse to pay it without just cause to their daughter; and therefore, the daughter cannot enter a monastery, incur excommunication?" Answer: "If they refuse for a just reason, such as if they remain in notable poverty, they will not incur it. If they refuse unjustly, they will incur it, unless they give at least a legitimate or adequate support; because parents are obligated to pay the legitimate dowry, but not the entire dowry, unless after the death of the parents, that is, by inheritance." Assuming the parents' ability to pay the dowry, and also assuming that the legitimate portion is sufficient for all that is required for entering, or for the habit or profession in a monastery (unless it is insufficient, the parents would incur excommunication only in the case where the religious order could and would accept any dowry, which is not the question here); the following answer seems appropriate to the proposed question. Parents unjustly deny the dowry to their daughter, either before entering the monastery, or after they have given their consent for her to enter the monastery and receive the habit (for the dowry is paid shortly before the profession, although the obligation to pay arises at the very entrance to the monastery, and even before); in this case, they certainly seem to incur excommunication, since they prevent the daughter from carrying

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out her will to receive the habit, or to make solemn profession; but if they deny it before entering the monastery, they do not incur excommunication; for they immediately impede the entrance, not the habit or the profession.

[*Latin ed. p. 669*]

285. Those who do not fall under its jurisdiction, since the legislators did not expressly include them. 7. We believe it is evident that those who, even through importunate prayers, dissuade someone from entering a religious order or from taking religious vows, do not incur this excommunication; for prayers, properly speaking, cannot constitute an impediment. 8. Finally, we must fully embrace what is written by the esteemed DelVecchio in *Theologia Moralis*, Volume 1, number 916, which reads as follows: "Those who, in any way, hinder [someone] from religion incur [punishment]; from which it follows that bishops, vicars, and superiors of religious orders may be censured, if they do not defend the just freedom of others as much as is within their power. Likewise, parents who unjustly turn their daughters away from religion; who, however, are easily excused, at least for a time, due to the vehement affection of the flesh, by which they pursue them." Indeed, the Fathers of Trent inflict excommunication upon those who hinder either the habit or the religious profession; therefore, those who actively hinder incur [punishment]; but bishops, vicars, and religious superiors, in such a case, do not hinder, but rather are passive; and therefore, they cannot incur any excommunication, since they do not perform any act of hindering. As for parents who unjustly turn their daughters away from religion, it must be noted that they incur excommunication if they prevent their daughters from either receiving the religious habit or from taking religious vows; and therefore, if they do these things, they incur excommunication, otherwise not. However, in order for those who hinder to incur such an excommunication, certain conditions must be present, namely: 1. that the hindrance itself be a proper hindrance, whether physical or moral, opposed to the reception of the habit or the religious profession; for if the hindrance opposed is easily overcome, they are not to be condemned with excommunication, since the same reasoning applies to a slight fear. For this reason, as we have said, the prayers of parents, even if importunate and accompanied by tears, cannot be considered a hindrance. Nor can their threats, since it is clear from their character that they are mild, religious, and full of exquisite love for their daughter. Indeed, such parents will grant their consent after a short time, but they will never achieve their purpose through threats. However, this is not the case with deceptions and trickery, by which they try to hinder the daughters' will from pursuing their intended purpose. Indeed, deceptions and trickery are the most suitable means for hindering something, as is evident from the examples that we have presented above for the sake of clarification. Another condition is that the hindrance must have been imposed without a just cause; for this is

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expressly cautioned against in the decree; therefore, those who act with a just cause...

[*Latin ed. p. 670*]

286. An obstacle motivated by a just cause does not impede the validity of excommunication. If parents, for example, oppose a daughter who wishes to enter religious life, because they are suffering from poverty and need her support; or because they believe her to be less suited for the religious life; or because they know that she suffers from some illness which religious women should conceal, or which it is not proper to reveal, or because they simply do not wish it; or for other reasonable reasons, these parents are acting as they ought. But what if the parents oppose and prevent [the daughter] because they know that a very wealthy relative of the daughter has left her a substantial inheritance by will, and that the will will certainly be revoked if she takes religious vows? We answer: If the parents need those goods to live an honorable life, or to free themselves from a great debt with which they are burdened, and they cannot otherwise provide for themselves, they are not to be condemned by excommunication; for they need the daughter for her honorable and necessary support. But if the parents do not need those goods left by the will, yet they prevent the daughter from taking religious vows in order to obtain them, they incur excommunication; for it is unjust and unreasonable to cause someone to abandon the vocation to which they have been called, for the sake of temporal gain, and perhaps to endanger their soul with eternal ruin. It cannot be objected that the parents will suffer a great loss from the loss of this substantial inheritance; for the law in question is ecclesiastical, and does not obligate when there is a grave inconvenience. We answer that the inheritance was left to the daughter, not to the parents, and therefore they suffer no loss; and furthermore, we have assumed that they do not need those goods for their honorable support. Finally, in order to incur this excommunication, it is necessary that the obstacle actually take effect; for excommunication does not apply to an attempt, but to the result that follows from it; and on this point, the decree is very clear: "If he impedes [her] without a just cause." But if he does not attempt to impede, or if he tries but fails, he does not incur excommunication. Therefore, if, despite the obstacles raised, no effect results, and the young woman or the woman accomplishes what she intended, those who raised the obstacles incur no excommunication; for excommunication is incurred by the effect that follows. Those who provide assistance, counsel, or favor to hinder [her], and are in error in the law, do not incur excommunication.

[*Latin ed. p. 671*]

287 APPENDIX XXXIX. Concerning the excommunication imposed upon those clerics and missionaries who engage in commerce in the

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Orient of India and in America. Such an excommunication is neither found in the decrees of the Council of Trent, nor in any renewed Apostolic Constitution. Nevertheless, since it retains its force, it is necessary to speak of it. It is most clearly established by the most ancient canons, ecclesiastical rules, and numerous Constitutions of the Roman Pontiffs that commerce is forbidden to clerics. In a matter so evident, it seems superfluous to offer documents; rather, we will present reasons from St. Thomas, by which it is demonstrated how justly commerce is forbidden to clerics, whether secular or regular. Furthermore, the Holy Doctor writes in 2-2, q. 77, Art. 4: "Regarding the third [point], it should be said that clerics ought not only to abstain from those things which are, according to themselves, evil, but also from those things which have the appearance of evil." This indeed occurs in commerce, both because it is ordered towards earthly gain, of which clerics ought to be contemptuous; and also because of the frequent vices of merchants, since, as it is said in Ecclesiasticus 26:28, "it is difficult for a merchant to be cleansed of sins of the lips." There is also another reason, because commerce too much involves the mind with secular concerns, and consequently draws it away from spiritual matters; and the Apostle says 2 Timothy 2:4: "No soldier, when on service, entangles himself in affairs of this life." However, it is permissible for clerics to make use of the first form of exchange, which is ordered to the necessity of life, by buying or selling. Nevertheless, although all clerics knew that commerce was forbidden, they nevertheless thought that it was forbidden only because of the temporal gain by which someone might become richer, and money might abound; but it happened that many who had gone to the islands of Japan, to the Empire of China, and to America, to preach the Gospel, engaged in commerce from the beginning in order to support the Catholic missions by the profits derived therefrom; but then they also began to convert it to the benefit of their own religion and their own advantage. Hence, many abuses arose and scandals occurred, ecclesiastical rules were neglected, canons were disregarded, and not a few complaints were brought to the Apostolic See (1). Urban VIII, seeing the abuses increase... (1) Readers may read a brief history of the matter in the acts of the Holy See, Vol. VII, page 319.

[*Latin ed. p. 672*]

288. Seeking to apply a remedy, and seizing the opportunity presented by the pastoral Constitution issued on February 22, 1633, by which he excommunicated those who dared to obstruct Catholic missionaries from accessing the kingdoms of India, which could only be reached through Portugal, he also excommunicated any religious persons who were engaged in commerce in those aforementioned kingdoms. §. 8. "Furthermore, because, according to the sacred canons, the decrees of councils, and the apostolic constitutions, all religious persons, and even others within the ecclesiasti-

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cal order, especially those in the sacred orders, are strictly prohibited from engaging in commerce and secular negotiations, and because it is highly detrimental, improper, and indecorous for such persons, and especially those who are dedicated to preaching the holy Gospel of our Lord Jesus Christ, to involve themselves or engage in these commercial activities, and in order that these sacred canons and decrees, and these apostolic constitutions, may be observed, we, by the authority of the apostolic see, and by these present enactments, strictly forbid all religious persons of whatever order and institute, whether mendicants or not, including the Society of Jesus, and each and every one of them, both in those places now existing, and in those to which they may be sent in the future, from engaging in any and all commerce or negotiations, in whatever manner it may occur, whether by themselves or through others, whether in their own name or in the name of the community, directly or indirectly, or by any other pretext, under pain of excommunication *latae sententiae*, and with the loss of all active and passive ecclesiastical rights, offices, and degrees, and of all dignities, including the ability to exercise them, and, in addition, the forfeiture of all merchandise and profits derived from them; all of which shall be reserved by the superiors of the religious orders from which the offenders come, for the use of the missions which those same religious orders have and will have in the aforementioned India, and not for other purposes; and we strictly command those same superiors to be vigilant in this matter, and to proceed against those who offend with the aforementioned penalties, depriving them of the power to remit or condone, in any way, even the smallest portion, of these goods and profits."

Although Pope Urban VIII imposed this prohibition on engaging in commerce with such serious penalties and words, it began to be circumvented by various pretexts by ecclesiastical men, and its observance began to be disregarded, and scandals and complaints began to arise anew. Pope Clement IX, therefore...

[*Latin ed. p. 673*]

The Holy See judged that abuses and disobedience were to be curbed by increasing penalties, and extended the prohibition of Urban to the regions of Americae. This was accomplished through the Bull *Sollicitudo pastoralis officii*, which was promulgated on June 17, 1669. We read it as follows in the Roman Bullarium, Vol. XVII, page 798, Edit. Taur. 1869: "By the abundant grace of divine wisdom and clemency, which we possess for the governance of the Catholic Church throughout the world, we are moved to strive to remove from the midst, with salutary sanctions, and to uproot entirely, those things which hinder or impede the propagation of the Catholic religion, and the vocation of men to the Lord, especially of those called to the religious life, who have renounced themselves and despised all worldly things in order to enrich Christ, and who, with a sincere

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heart and a tranquil mind, should devote themselves solely to the service of God, so that they may not stain the glory of virtue. §. 1. "Indeed, not long ago, Urban VIII, Pope of happy memory, our predecessor, considering, through the sacred canons, the decrees of councils, and apostolic constitutions, that commerce and secular negotiations are strictly prohibited for all religious, and especially for those in the ecclesiastical state, and that it is very harmful, unbecoming, and improper for those dedicated to the sacred ministry of our Lord Jesus Christ to engage in such commerce and negotiations, issued a constitution on February 22, 1633, among other things, by which he forbade all religious, of whatever order or institute, whether mendicants or not, including the Society of Jesus, and each of their members, then in the islands, provinces, regions, and kingdoms of India Orientalis, Chinae, and Japan, and in the future, to engage in any kind of commerce or negotiation, whether by themselves or through others, whether in their own name or in the name of the community, directly or indirectly, or under any other pretext or guise, under pain of excommunication, and of incurring the penalty of deprivation of voice, active and passive, of offices and degrees and dignities, and of the right to hold them, and moreover, of the loss of merchandise and profits derived therefrom: all of which things should be taken from those who are found to be guilty by their superiors, for the use of missions."

[*Latin ed. p. 674*]

The provided text does not contain the quotation of Isaiah 24:2. Therefore, no changes are made to the text.

290. "These same regulations, and those which will be in effect in the aforementioned Indies, and not in others; and with the same penalties, so that they may be vigilant in this regard, and against those who transgress, they shall proceed to the aforementioned penalties, having removed from such transgressors, whatever minimum amount of said goods and profits, or to grant forgiveness, and otherwise, as is more fully contained in the Constitution of the aforementioned predecessor, Urban, which I hold present for fully and sufficiently expressed, and which we wish to be included verbatim. §. 2. "But since (as we have learned with great sorrow of him) many of these religious and ecclesiastical persons, forgetting the most serious duties of their own profession, do not abstain from such worldly commerce and negotiations, but have attempted to exempt themselves from the observance of the aforementioned Constitution of the predecessor, Urban, under various pretexts, colors, and subterfuges, and are striving, to the detriment of their own souls, and also setting a most deplorable example and scandal for many: we, guided by the precepts of the Doctors of the Church, which teach that no soldier of God should engage in worldly business, lest he please him to whom he has devoted himself, but rather, with the greatest zeal, should strive to remove this great and ruinous evil from the Church of

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God, to eliminate the occasions of scandals arising from it, and to promote the salvation of souls and the propagation of the Catholic Christian faith, as far as it is permitted to us from above, we have decreed to entirely deprive those dedicated to the heavenly military service, especially those destined for the conversion of infidels and the preaching of the Gospel, of all hope of worldly gain, so that, as good soldiers of Christ, they may labor and honor their ministry, and, with greater zeal and diligence, seeking the aid of heavenly favor, may strive to enrich the Lord's storehouses with new fruits of labor, we have entirely decided to deprive them of [such gain]." §. 3. "Therefore, adhering to the sacred canons, and to the decrees and constitutions aforementioned, and approving and renewing those, and especially the aforementioned Constitution of Urban, in those things which are not contrary to the present letters, and concerning the matters above, we, by our own motion, and from certain knowledge and mature deliberation, and by the fullness of our apostolic power, decree and establish for all and each ecclesiastical persons, both secular and regular, of whatever state, rank, condition, and quality, from any Order, Congregation, and Institute, both of Mendicants and of those not Mendicants, even of the Society of Jesus,...

[*Latin ed. p. 675*]

291 And to each of those who, whether sent to islands, provinces, kingdoms of the Orient, and especially to the province of the Society of Jesus called Japan, and to parts of both Southern and Northern America, by the Apostolic See, or by the Congregation of Venerable Brothers, our Holy Roman Cardinals, entrusted with the affairs of the Propagation of the Faith, or by their superiors, under the name of Missionaries, or by any other title, have been sent for a time, or who may reside in those parts in any way, under the sentence of excommunication, and the deprivation of active and passive voice, and of offices, dignities, and grades of any kind obtained by them, and the inability to obtain those and other things in the future, as well as the loss of all goods and profits incurred by this very act, and other penalties which, for the time being, are imposed by us or by the Roman Pontiff existing at that time, or by the aforementioned Congregation, by these presents, we strictly prohibit and interdict, that they engage in secular commerce and negotiations of this kind, in any way, under any pretext, title, color, device, cause, occasion, or form, even once, either by themselves or through ministers or other subordinate persons, directly or indirectly, either in their own name or in the name of (1) It seems more appropriate to read "I" instead of "Si," respectively, "religions," or "congregations," or "societies," even of Jesus or others, and that they in any way and manner interfere or mix themselves. And from now on, as the case may be, and vice versa, after the event has occurred, goods and profits of any kind which have arisen and will arise from such commerce and negotiations, we apply to the use and benefit of the poor, hospitals, ecclesiastical seminaries, and

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workers (not, however, of the religions, congregations, and societies, even of Jesus, or of their institutes, who have erred in the premises, or concerning them, but of others who have not erred), and we order that they be held accountable to consign the goods and profits of such places to the Ordinaries, or their vicars in spiritual matters, or to official, or apostolic vicars, or provicars. (1) If, however, as delegates of the aforementioned See, they are to distribute and expend these things, as is preferred, and not for other uses, we strictly warn them about this, concerning which their conscience must be diligently examined. And because those who are erring in the premises and concerning them most often excuse themselves under the pretext of necessity for their missions, such excuses cannot and should not, in any way, be tolerated or accepted by them or by anyone. § . 4 . "Furthermore, to those same..."

[*Latin ed. p. 676*]

292. We declare and affirm that the penalties and punishments imposed, and those declared to be imposed, by superiors, immediate superiors, and provincial and general superiors of the aforementioned Orders, Congregations, and Societies, including those of Jesus, who are respectively subject to them in the aforementioned matters or concerning them, even if they commit offenses only once, shall not punish, at least by removing them from the places where they committed the offense; but those who, after such a sentence of excommunication, are absolved by their superiors, or by another or others with the necessary authority, shall not be absolved from the aforementioned penalties, except in the hour of death, unless they have first restored the benefits lost. Such an excommunication, being of the type known as *latae sententiae*, could not, under any circumstances, be considered valid according to the Apostolic Constitution, unless it had been expressly renewed; but it is not subject to those censures which Pope Pius IX wished to remain immutable through such an exception.

"Those censures, whether of excommunication, or suspension, or interdict, which are laid down in Our Constitutions or in the sacred canons of Our predecessors, other than those which We have recently mentioned, have remained in full force and effect, whether concerning the election of the Roman Pontiff, or the internal governance of any Orders and Regular Institutes, or of any colleges, Congregations, associations, or pious institutions of any name or kind whatsoever; We wish and declare that all of these are firm and remain in their full force."

"The excommunication *latae sententiae* imposed against missionaries who engage in trade or commerce in India and America does not apply to any of those things which Pope Pius IX mentioned in the testimony cited above; therefore, it should be considered abrogated by the best of laws. However, in the year 1872, when the Supreme Sacred Inquisition was consulted about whether the censures *latae sententiae* against Ecclesiastics

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and missionaries working in commerce in the Orient still held force after the Apostolic Constitution issued by His Holiness, Pope Pius IX, on the fourth day before the Ides of October, 1869, the Popes Inquisitors General, in a Congregation held on Thursday, December 4, 1872, after considering the reservation or exception made to the paragraph: "Those..." ordered that circular letters be sent to the local Ordinaries by the Holy Congregation for the Propagation of the Faith, which were issued on March 29, 1873. Thus it is read in the Acts of the Holy See, Volume VII, page 317.

"Since a doubt was raised before the Supreme Sacred Congregation whether, after the Apostolic Constitution issued by His Holiness, Pope Pius IX, on the fourth day before the Ides of October, 1869, the censures *latae sententiae* against Ecclesiastics and missionaries working in commerce in the Orient still held force, as prescribed in the Constitutions of Urban VIII, issued on February 22, 1633, and *Sollicitudo* of Clement IX, issued on July 17, 1669..."

[*Latin ed. p. 677*]

293. "Indeed, those who were consulted judged that the aforementioned Constitution could provide an opportunity for questions, and they requested that the Most Holy Father would deign to declare whether the Constitutions of the Supreme Pontiffs Urban VIII and Clement IX, previously mentioned, are still in force, and that this declaration should be notified by this Holy Congregation through circular letters, as is done by the tenor of the present document, to all Missionaries residing in the Eastern Indies and in America. Furthermore, His Holiness judged that this opinion should be followed in all respects. In the meantime, I pray to God, etc."

Therefore, the present excommunication is in effect due to the extension of the law made by the Supreme Prince, and for this reason, it has regained its force only now. Having said these things, let us consider 1. what is the matter of this excommunication; 2. who incurs it. And concerning 1. The matter of this excommunication is all and any commerce or transaction, whatever the manner in which it is is carried out, in the Eastern Indies, in the province of the Society of Jesus called Laponia, and in both Southern and Northern America. If it is committed for any reason in any other part of the world, the excommunication is not incurred; for the places are determined by the Legislator, and since the law is penal, it is not permissible to extend it to other places whatsoever, even though the same reason may prevail.

For indeed, the excommunication is incurred because of commerce or a transaction, it is necessary to determine the meaning of these terms, lest we fall into error. The Most Reverend D'Annibale, in his Commentary, page 26, edition of 1880, writes: "The object of this excommunication is all and any transaction, or commerce."

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"Negotiation," in its proper signification, is something that is sold at a higher price without being changed. (From Lessius and St. Alphonsus). "Commerce" is broader, and it includes those things that are naturally changed and then sold, such as if someone buys must to sell as wine; calves, to sell as oxen; pigs, to sell as sausages; naturally, I say; for if things are changed by human labor, or industry, then a more artificial process is understood; for example, if from purchased iron, wood, and wool, one makes weapons, vessels, and clothing; which, therefore, does not pertain here."

But what the most learned man states about the definition of artifice is not approved by everyone. Belletus, in his Disquisitions Clerical, part 2, § 51, on Clerical Penalties, no. 1, affirms that a transaction forbidden to clerics also intervenes when one of them buys something, for example, wool, in order to, at his own expense, through the industry and labor of mercenaries and craftsmen (not through himself), to produce something; for example, to have cloth made from the wool purchased and then to sell it, as

[*Latin ed. p. 678*]

294. Hence, it is possible to derive some profit from this. These are not merchants; for merchants profit from their own industry, and perhaps derive more profit from things than from industry itself. Moreover, a considerable amount of deceit is added to this, and from this, those inconveniences arise, as is stated in Decretal, Lib. III, title 1, n. 131: "Indeed, that is considered 'artifice,' when someone buys a material that is afterward prohibited by law, and is reduced to another form, as if someone were to buy reeds and make baskets; or buy thread and make nets." And this kind of artifice is not prohibited to clerics, but rather is recommended. Thus, according to the explanation given, it is understood that when a thing bought is sold without changing its nature or quality, this is permissible. But what if the thing is changed in form? Regarding this matter, we believe that the opinion of the Reverend Schmalzgrueber should be held, as is stated in Canon Law, Part V, Title 50, n. 17: "Is it also prohibited to clerics and religious that species of commerce in which things are changed into another form through artifice, labor, or industry, with the intention of gaining profit? To this question, the solution depends on whether the profit is sought from the things themselves, which the cleric or religious can produce with their own hands, without hired workers or artificers, from which they can profit; or whether the things are bought or obtained from elsewhere." For example, the canonists cite the case of the Apostles who returned after fishing, and the case of Paul, who worked with his own hands in the art of the stage, to provide for his needs; and the case of monks who wove nets for the same purpose, which clearly demonstrates the matter. Indeed, all those who buy things, even changing their quality into another form, and then commonly sell them, derive profit (1).

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(1) This opinion is held by Molin, Tract. 2, D. 342, lib. 3, Tract. 4, Cap. 17, n. n. 4; Yriesn. 7; and others. Palliz, Tract. n. 6; Laym, 6, cited in cap. 10, n. 2; Pirh, here.

[*Latin ed. p. 679*]

"Let it not be a business transaction. However, if it is done solely for the sake of utility, it approaches a proper business transaction, and therefore does not concern religious persons; but since in such cases they are engaged in activities that are contrary to a proper business transaction, it must be considered to be subject to the present prohibition." Therefore, clerics act illicitly in the following cases: 1. If, with the intention of profit, they buy grapes in order to have wine made from them by servants or ministers, which they then sell; 2. if they buy barley and oats to make beer, wool to make cloth, iron to make swords, axes, and other items, and then sell them; 3. if they buy cattle and fodder in order to fatten them and then sell them at a profit. The reason for all of this is that, although the thing purchased is changed into another form, that change is made by ministers acting under their direction, and therefore it is the fruit of the purchase and the labor of the ministers. Similarly, it is illicit to lease out the property, animals, and land of others, if this is done not for their own or their family's support, but for the sake of profit, so that the fruits derived from it may be sold and a profit made." The reason for this is clear. In order for a business transaction to be forbidden to clerics and religious, two things are required: 1. that the thing be purchased with the intention of selling it, either changed or unchanged; 2. that it be purchased for the sake of profit, which is expected from that sale. But those who do the things we have described above do both of these things; therefore, they are engaged in a business transaction. It follows that a legitimate economic transaction is permissible for clerics and religious, in which things are purchased for their own and their family's support, and which, if they remain in surplus, are sold at the current price; it also follows that a transaction is not a business transaction if a cleric, after having purchased the necessary things for himself, either does not want to use them or cannot use them, and sells them at a higher price, provided that the price is common or current; it also follows that a transaction is not a business transaction if a cleric sells things that are not superfluous, but purchases them for himself and his family without the intention of selling them again; indeed, without such an intention, neither a business transaction nor commerce is understood; finally, it follows that it cannot be said that a cleric is engaged in a business transaction if, after having leased land or animals, etc., for a fixed period, he continues the lease, since in the beginning there was no intention of selling, and because commerce requires that the same person be both the buyer and the seller. Whatever distinction canonists and theologians may make between a business transaction and commerce, it is of no consequence for our purpose, since both Urban VIII and (1) This was

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also declared by the Sacred Congregation of the Council in the year 1662, as Scavini states in Vol. 1, no. 676, edition of Del Vecchio, 1882.

[*Latin ed. p. 680*]

296 Pope Clement IX forbade both practices strictly and under the penalty of excommunication in the aforementioned regions. We believe that only the practice of commerce itself should be excluded, not in a broader sense, but strictly, as we defined it above from Cl. Reiffensteul; for if it is taken in a broader sense, it is converted into proper commerce, as even the Doctors affirm. After these things, let us see who incurs this excommunication. And it is clear from Pope Clement IX's Constitution that those who incur it are ecclesiastical men, both secular and regular, who, whether by order of the Apostolic See, or of the Holy Congregation of Propaganda Fide, or of their respective Superiors, are sent as Missionaries, or under any other title, to the aforementioned regions of Japan, or to either part of America, or who remain there in any way. Therefore, ecclesiastical persons, whether secular or regular, who are indigenous to these places, are not subject to this censure. However, if any indigenous person, residing in Europe, is sent to these provinces for the purpose of carrying out missions, or under any other title, he is subject to excommunication; for the law does not define to which region the Missionaries who are sent must belong; but this one thing is required, that whether of any order, status, degree, condition, or Congregation, they must be sent by the Holy Apostolic See, or by the Holy Congregation of Propaganda Fide, or by their respective Superiors; which can very well happen in the case of an indigenous person residing in Europe, for example. Hence, if Japanese or Indians from America are sent to the Jesuit province of Japan, or to India as Missionaries, or if Americans from Japan, India, or Europe are sent to America, provided they engage in commerce or trade, they are subject to excommunication; for there appears to be no reason why they should be excluded. Indeed, they are sent, and they are sent as Missionaries, or under another title, and they engage in commerce; therefore, all the conditions prescribed by the legislator are fulfilled in their case, so that excommunication is incurred. But what if an indigenous person from South America is destined for North America as a Missionary, or under another title; will he avoid excommunication if he engages in commerce? We do not think so; for the conditions required to incur excommunication are also fulfilled in this case; for he is an ecclesiastical person, secular or regular, and he is sent by the Holy See, or by the Holy Congregation of Propaganda Fide, or by his own Superiors, for the purpose of carrying out sacred missions, or under another title. For this reason, when we speak of indigenous people, we are speaking only of those who either live there, or who return there spontaneously from other regions, not sent, nor destined

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for the purpose of carrying out missions by the Holy See.

[*Latin ed. p. 681*]

297 The Apostolic See, or etc. The words do not present a difficulty: either these individuals will reside in those regions in some manner; for they say nothing other than that these persons must migrate from other regions to the aforementioned provinces, and that they are foreigners there, even though they have not been sent by the Apostolic See, nor by Superiors as Missionaries, nor under any other title, such as prefects, catechists, and so forth, and that they conduct business there. This is also evident from the word "commorari," which is said of one who is a foreigner in the place where he is present. But the natives who are there are not sent, nor do they "commorate," but rather they exist there; on the contrary, the natives who are sent from other regions by their Superiors for the purpose of performing some office are truly sent; therefore, these incur excommunication if they conduct business, not those. Therefore, what about a native who resides in Rome for the purpose of study, and upon completing his studies, returns to his own region, having been sent by no one? If he conducts business there, is he excommunicated? By no means; for the law requires that someone be either sent to those provinces, or that he reside there for some reason; the latter applies to foreigners. But the person we are speaking of is neither sent, nor is he a foreigner; therefore, he is not included under the law. Hence, it follows that Missionaries should not be Europeans who, by performing the prohibited action in those provinces, incur excommunication; but rather, they should be of any nation and sent there under any title. But would it not be the case that if an African, or an American, or a Chinese were sent to those provinces during the time of Urban VIII (1625-1644) or Clement IX (1667-1670) for the purpose of performing sacred missions, he would avoid excommunication? If he conducted business or engaged in commerce? No one would say this, since both these individuals and others could be secular Presbyterians, and could be sent by their own Superiors, or by the Holy Congregation of Propaganda Fide; therefore, they are in all respects subject to the law. However, we do not believe that Bishops are included under such a law. For Urban VIII subjected only religious individuals of any Order and Institute to excommunication for conducting business in those provinces; and these cannot be Bishops, who, on the other hand, are not sent by their own Superiors, but either by the Apostolic See, or by the Holy Congregation of Propaganda Fide, for the purpose of governing missions. Although Clement IX inflicts excommunication upon all and every ecclesiastical person, both regular and secular, of whatever status, degree, condition, and quality; nevertheless, Bishops do not fall under these names: 1. because the meaning of these terms is ordinarily expressed by the words "of whatever dignity"; 2. because these persons

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are sent under

[*Latin ed. p. 682*]

298 by the name of Missionaries; but bishops are not sent by this name; 3. nor do other words have any force: or by any other title: for the dignity of a bishop is not a title; therefore, these words are understood to refer to other titles which do not include the episcopal dignity, such as Apostolic Prefects, Superiors of Missions, Economists, Catechists, etc.; 4. because the Pope threatens excommunication to immediate Superiors, and to provincial and general Superiors of Orders, Congregations, and Societies, if they respectively do not remove those subordinates who, having been committed to those places by them, have committed offenses; but it does not pertain to the general Superiors, much less to the provincial Superiors, and much less to the immediate Superiors, to remove a Vicar Apostolic, or a bishop from his vicariate; for this pertains to the Roman Pontiff and to the Sacred Congregation for the Propagation of the Faith. It is also clear from the same Constitution of Clement IX, that immediate Superiors, or those who are in charge of the Sacred Gospel, or others by any title, residing in those provinces, and provincial and general Superiors of the Orders, Congregations, and Societies of Jesus, are threatened with excommunication, unless they punish subordinates who are merchants, at least by removing them from those places. And these things are so clear and evident that they do not require explanation. But we ask: Are immediate Superiors only religious, or also secular? If we are not mistaken, only regular Superiors are excommunicated in the law. Indeed, it seems clear to us that the words "immediate Superiors, and provincial and general" refer to the following: to the Orders, Congregations, and Societies, both religious, of which we speak; but the Superiors of the regulars are regulars. Furthermore, the Prefects of Religious are certainly called Superiors; but Prefects of secular priests are not called Superiors in the Sacred Missions undertaken in foreign provinces. Furthermore, it is ordinarily the case that provincial, and much more general Superiors, do not reside in the places where the Sacred Missions are carried out; therefore, why are they excommunicated? Indeed, because they have been warned by the immediate Superiors that a subordinate who has committed an offense has not been removed from the place to which he was committed, or because they are unwilling to remove him. But this proves that the Superiors are religious, not secular. Surely our readers will say that "immediate Superiors" can also be understood to mean secular. But the following prevents us from conceding this. Whatever we may say, the words "respectively subordinates" refer solely to religious Orders, Congregations, and Societies: but this is what is said in the law.

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Immediate Superiors, and provincial

[*Latin ed. p. 683*]

299. Concerning those who are clerical and general; therefore, they are regular, not secular; for they are not subject to the orders of religious institutions. Finally, in a law that is odious, a more lenient interpretation must be established, and no one should be included under it unless it is certain that they are included. We do not know how those who are secular superiors are included under the terms of this law; and more learned judges will decide. And this is nothing new. Indeed, even in the Constitution *Effraenatam*, promulgated by Pius V against those who procure abortions (Cf. Our Commentary, Vol. II, App. XXXII), although the Constitution also mentions pregnant women, those who incur the penalties are nevertheless exempt from excommunication, even for this reason. However, excommunication is incurred, regardless of how the business or trade is carried out; for it is incurred in any way it is carried out, under any pretext, title, color, device, cause, occasion, and form, even once, by themselves, or through ministers, or other subsidiary persons, directly or indirectly, either in their own name, or in the name of their respective religious orders or congregations, and societies, even of the Society of Jesus, or of any others, and in any way and manner whatsoever they may intervene or become involved. Thus, the Roman Pontiffs have left no escape for anyone to eliminate such a deplorable vice; and therefore, they have included in the ancient canons those who engage in trade, for which reason, if anyone has engaged in it once and again, they evade the penalties. Our Pontiffs do not do this; but they subject even those missionaries to excommunication who have engaged in trade even once. Regarding the reservation of such a censure, [St.] Peter Avanzini, in *Acta S. Sedis*, Vol. VII, page 324, believes that it is simply reserved to the Roman Pontiff. "I believe," he writes, "that it can be appropriately placed under the list of excommunications reserved to the Roman Pontiff; namely, in the same way that the fourth excommunication is inflicted on those who do not denounce hidden leaders of sects, until they have denounced them." A similar clause is attached to the excommunication of which we are speaking, by the words of the Constitution of Clement. However, the sentence of this excommunication, by superiors or others, even with any authority, cannot absolve anyone from the aforementioned, except in the article of death, unless the profits of this kind are first restored. If the condition of restoring the profits is met, they can be absolved by any confessor, as in the article of death. From these two things, it seems that such an excommunication, before the restoration of profits,

[*Latin ed. p. 684*]

300 tion to be simply reserved to the Roman Pontiff; after restitution, it can be absolved by anyone approved by the confessions. However, almost

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all Commentators affirm that it is reserved to no one. And indeed, this is truer; for in the aforementioned words of Clement IX, it does not appear in any way that he reserved to the Roman Pontiffs the absolution of such an excommunication, since he does not even mention the Romans Pontiffs; on the contrary, when Roman Pontiffs reserve to themselves the absolution of some excommunication, they usually express this with these or similar words: "from which (excommunication) one cannot be absolved except by us, or for the time being by the Roman Pontiff, or by this Apostolic See," as we can demonstrate with numerous examples, which are found in various chapters and places of our Commentary. Therefore, the reason given by the learned Avanzinio, based on a comparison of this chapter with Chapter IV on excommunications simply reserved, collapses. For we do not learn from the words of that chapter that that excommunication is reserved to the Roman Pontiff; but from the declaration that precedes that chapter, namely, from the words: "We declare that the excommunication of latae sententiae is reserved to the Roman Pontiff." Since we do not have this declaration either in the circular letters of the Holy Congregation of Propaganda Fide, or in the Constitutions of Urban VIII, or of Clement IX, we must conclude, with all due reason, that the excommunication in the present chapter is reserved to no one. Nor can anyone object that, in Clement IX's Constitution, it is prohibited for anyone, whether a Superior or another, with any authority, to absolve someone who is subject to such an excommunication; for this does not indicate that this excommunication is reserved, but rather that the delinquent cannot be absolved unless he first makes restitution; that is, the Pontiff sets a condition for those who are to be absolved. But such a condition does not indicate a reservation (1). For this reason, it must be held that the excommunication is not reserved to the Roman Pontiff (1). The reason given by Avanzinio is thus refuted, as noted by the learned Ballerini in his notes to Gury. However, the argument presented in the notes to Gury seems too weak, based on clauses of this kind, which merely prescribe what is required by law from one who seeks to be absolved; and in no other sense can a case be considered reserved to the Roman Pontiff by virtue of such a clause, unless it is the case that the Pontiff, as Legislator, reserves to himself the relaxation of these obligations, namely, in one case the denunciation, and in the other, the renunciation of profits. But the same can be said of the obligation to denounce those who are seeking absolution, as mentioned in the preceding passage; for no one other than the Roman Pontiff has the power to absolve him who is not prepared to comply with this obligation, and yet that excommunication is not considered among those reserved to the Roman Pontiff. Therefore, in order to determine to whom an excommunication of this kind, endowed with such clauses, is

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reserved, it is necessary to examine the clauses themselves.

[*Latin ed. p. 685*]

304 This communication cannot be eradicated. But in the case of Romano, the Pontiff does not simply reserve it; rather, the Pontiff reserves it beforehand; consequently, absolution is required from him, so that anyone who has been approved for Confessions can be absolved, but only under the condition that the delinquent first restores all the profits obtained from the crime, and from any negotiation or commerce derived from it; for if he can, and does not, restore, he must be considered unworthy of being absolved, unless he first makes amends for his fault. Therefore, the restoration of profits obtained from negotiation must be prohibited by the Confessaries. We also believe that this case cannot be resolved by common rules, although he promises to restore; it must be absolutely referred to the Roman Pontiff.

However, the article concerning death must be excepted, because it is clearly stated in the law: "Furthermore, those who have been admitted to the penalty for the crime; and in order to absolve them, the condition is not fulfilled, by which the delinquent can be absolved, although the profits have not been restored; for whatever the reason may be." In this matter, we must admire the wise laws and regulations of the Roman Pontiffs. For in the article concerning death, Confessaries are prohibited from granting absolution to those who do not restore; but to those who promise to restore, absolution is granted; it is left to the judgment and prudence of the Confessari; they are bound to grant absolution to those who are able to restore, or who have been stolen from, or have caused damage, even if these seriously promise to restore, and make restitution for theft, or damages caused, or sincerely fulfill their duty. But this only happens when it concerns heretics; for even after the denunciation of the leaders of the heretics has been made, the person who has not denounced can be absolved by the Roman Pontiff alone; but in other cases, the penitent can be absolved by any Confessary. Otherwise, there would be no reason why the excommunication against the leaders of the heretics who have not denounced should be among those reserved to the Pontiff, while the excommunication against the priest who has not denounced is placed among those reserved to no one. Therefore, since no special authority is necessary to absolve him who has fulfilled his obligation, it must be concluded that such excommunications should be added to those reserved to no one.

[*Latin ed. p. 686*]

302 Another unjust reason; therefore, with regard to commutative justice, those who have committed no fault are held to be obligated to restore what is due. Therefore, the Roman Pontiffs, with the greatest wisdom and mercy, have made an exception to the article concerning death, because those who are in such circumstances, whether physical or moral, may be in a condition

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in which it is neither prudent nor, at times, even possible to compel them to restore what they have received; therefore, the Roman Pontiffs are judged to relax the penalty so that souls may not perish eternally. Therefore, what is the matter? Are those who are in the article of death, and who have committed such faults, not to be admonished by the confessor to restore what they have received? We believe that this is left to the prudence of the confessors, who must, after considering all things, decide what is most expedient for the eternal salvation of the individual; and this is according to law. For if Clement IX forbade absolution to merchants or traders while they enjoy their health, unless they first restore what they have received, but he omitted this condition for those who are in the article of death, the confessors cannot impose a burden that it is not established by law must be imposed. These things, however, relate to those who are delinquent, that is, those who have engaged in such negotiations and commerce even once. But this does not relate to superiors, whether immediate, provincial, or general; for, provided they have taken care to enforce the law, they can be absolved from any fault, even if they have not yet restored the profits. For Clement IX forbade only the absolution of those who have received profits from illicit negotiations, unless they first restore what they have received; but provincial and general superiors, unless they punish the delinquents, at least by removing them from the place where they committed the fault. Therefore, since the superior has not decreed that absolution is to be denied unless the profits are restored by the delinquents, they can be absolved before such restoration, and the delay of the delinquents cannot harm them. The restoration, however, must be made to the Ordinary, or to his vicars in spiritual matters, to the general officials, or to the Apostolic vicars, or to those who act as vicars, who are to distribute the restored profits for the use and benefit of the poor, hospitals, ecclesiastical seminaries, and workers. This applies not to the religious orders, congregations, or societies, even of the Society of Jesus, or to the institutes of those who have committed faults in the aforementioned matters, or concerning them, but to others who have not committed such faults. But this is true, as far as excommunication is concerned: the other penalties imposed, e.g., deprivation of active and passive voice, of offices, etc., remain in force; for, as we have already observed, nothing has been changed concerning these by the Apostolic Constitution.

[*Latin ed. p. 687*]

303 APPENDIX X L. Excommunicated are both clerics and laymen who have converted to their own use, or have usurped, the goods, jurisdictions, fruits, etc., of churches, and of other pious places. The excommunications of Trent, of which we spoke in the preceding chapters, are not reserved to anyone; but this one, of which we are now speaking, is simply reserved to the Roman Pontiff. Although we have discussed those who usurp the goods of the Church in Volume 1, page 352, and in that chapter we have said some

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things about the present excommunication of Trent, nevertheless, since there are many differences between the two, we have considered it best to explain this Tridentine censure in detail, so that this treatment may be more complete and clearer; and moreover, we can refer in various places to the decrees concerning the purchasers of ecclesiastical goods. Furthermore, the Tridentine canon is as follows: Session XXII, Chapter XI, De Reformat. "If any cleric or layman, whatever his dignity, even imperial or royal, should be so overcome by the root of all evils, namely, avarice, that he presumptuously converts to his own use, or usurps, the jurisdictions, goods, censuses, and rights, even feudal and emphyteutic, fruits, emoluments, or any other revenues which ought to be converted to the necessities of the ministers and the poor, either by himself or through others, by force, or by instilling fear, or even through pretended persons of the clergy or laity, or by any artifice, or by any pretext whatsoever, or if he hinders them from being received by those to whom they rightfully belong; let him be subject to an anathema as long as he does not fully restore to the Church and its administrators, or to the beneficiary, the jurisdictions, goods, things, rights, fruits, and revenues which he has seized, or which have come to him in any way, even through a donation made by a pretended person; and afterwards, let him obtain absolution from the Roman Pontiff. But if he is the patron of that same church, he shall, in addition to the aforementioned penalties, be deprived of the patronage itself. Furthermore, if any cleric has been the fabricator, or has consented to, such infamous frauds and usurpations, he shall be subject to the same penalties, and shall also be deprived of all benefices, and be rendered incapable of holding any benefice, and shall be subject to the censure of his own order."

[*Latin ed. p. 688*]

304. "After complete satisfaction and absolution, [the person] shall be released at the discretion of his Ordinary." In expounding this section, we follow the order of the section itself. We inquire, namely: 1. Which persons are subject to this excommunication? 2. For what actions do they incur excommunication? 3. Under what conditions? But in expounding these matters, we will also indicate the differences that exist between the present section of the Fathers of Trent and Section XI, title 1, clause 1, which we insert here, so that the reader may have it before his eyes: "Those who usurp, or seize, jurisdiction, goods, revenues, pertaining to ecclesiastical persons by reason of their churches or benefices." It is clear to those reading both sections that the section of Trent extends more widely than Section XI. For while Section XI excommunicates only those who usurp and seize, in this section, excommunication is imposed on those who, whether they usurp or not, convert to their own use by any means or under any pretext, or prevent from reaching those to whom they belong, goods or ecclesiastical revenues, and also on those to whom such goods, fruits, or rights have

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come through a supposed person, unless they can plead ignorance. For this reason, those who occupy [ecclesiastical goods] in this manner may perhaps avoid the censure of the Apostolic See in Section XI, but not the excommunication of Trent, which extends to any kind of occupation founded on any pretext whatsoever. However, as far as usurpation is concerned, it must be observed that the same meaning is to be understood in both sections; but with regard to the penalties incurred for the same crime, both in the section of Trent and in the Constitution of Pius, the Constitution of the Apostolic See prevails; therefore, the one who usurps ecclesiastical goods does not incur the censure of Trent, but the excommunication of the Constitution of Pius, and in no way both. This is clear not only from the equity of the law, by which we know that a double penalty of the same kind should not be imposed for the same crime, especially if one of the penalties is very severe, as in our case, in which those who usurp incur excommunication of a greater degree, specially reserved to the Roman Pontiff in the Constitution of the Apostolic See, and simply reserved in the section of the Council of Trent; but also from the declaration issued by the Supreme Sacred Congregation on July 8, 1874. The Supreme Inquisitors, being asked in this manner: "To what extent does the censure of Trent, confirmed by the Constitution of the Apostolic See, still remain in force?"

[*Latin ed. p. 689*]

305 » This is the same as asking: whether those who "innodant" (are joined) by excommunication in matters which both the Constitution of the Apostolic See and the Council of Trent address, incur a double excommunication, specially reserved to the Roman Pontiff by the aforementioned power (1). Hence, with regard to those who usurp, does the Tridentine excommunication lose its power, having been transferred into a broader one in Chapter XI of the Pius Constitution? However, as far as the extension of the term is concerned, we believe that it retains the same force, as we affirmed in Commentary, Vol. 1, page 364, regarding certain usurpations which are carried out authoritatively (2).

(1) The decree is found in Vol. IX, Acts of the Holy See, page 114.

(2) Furthermore, we have written as follows regarding authoritative usurpations: "For the Church's members are bound, and are subject to excommunication, not by usurpation, but by the act itself; and it cannot be conceived that thieves and robbers are exempt, simply because they usurp. Usurpation differs from sequestration by the authorities, which, when it occurs, is done according to the laws. This is what we confirmed with the authority of the Apostolic See, as Roncaglia affirmed. The most esteemed Father Piat, in his Commentary on the Constitution, page 86, writes: 'Our interpretation is contrary to the common opinion of the Doctors, whose words are general, and whose aim is to preserve the Church's patrimony; furthermore, it is contrary to the decree of the Holy Congregation and the

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Council of May 23, 1874.' Nevertheless, we do not believe that we should deviate from our opinion. And we are not deterred by the multitude of Doctors, whose authority must be subject to reason. However, not all those cited by the most excellent author favor our opinion. On the contrary, another, for example, in De Censuris, Vol. 1, disputation XVII, page 720, favors our opinion. He writes: 'We say that all those who, by virtue of jurisdiction, or by receiving fruits pertaining to ecclesiastical persons, occupy ecclesiastical persons and their benefices, presuming that they can do so, and that it is permitted to them by reason of the authority and power they hold, whether it be secular or ecclesiastical... This excommunication is not simply against thieves and robbers, but against lords and superiors who usurp the fruits of ecclesiastical benefices.' Indeed, we do not deny that another says: 'But since it is not restricted to these superiors and lords, it includes all those who occupy the Church's goods, as if these goods belonged to everyone, and not only to those who seize them as if they were alien goods. Then, someone is said to usurp the proceeds when, with the power of dominion, and as if using them by right, he preempts them.' Therefore, according to the latter, this law was primarily enacted against those who usurp.

[*Latin ed. p. 690*]

306. The communication concerning Chapter XI of the Constitution regarding the Apostolic See, which is reserved in a special manner to the Roman Pontiff, concerns usurpations. We demonstrate this in I, from the decree of the Supreme Inquisition. For if those who usurp, about whom we speak in the Tridentine Chapter, incur the excommunication of the Church, relying on the authority with which these [acts] are accompanied; therefore, usurpation primarily involves the deprivation of another, and it introduces a private claim, since it is not restricted by law to superiors and those in authority. It is not to be denied that the Canon of the most excellent Vatican Basilica extended this [law] to private individuals as well, which, in his time, could more easily occur due to usurpations, given the still-valid feudal law. However, in our time, it is extremely difficult, if not entirely impossible, for such things to occur. However, Pope Pius IX enacted a law, especially for this time, concerning not private individuals who usurp or have usurped, but the supreme civil rulers. And since laws are made concerning things that frequently happen, it should not be thought that Pope Pius IX intended to extend the law to private usurpations, that is, to actions that now neither occur nor can occur. Others, however, defend our opinion openly, as even our adversaries admit. We are not to be misled by the general nature of the words of the law; but it must not be denied that such general words are restricted to those who usurp, that is, to those who can and do usurp with impunity. For it seems incongruous to us that legislators would enact a law for those who either cannot usurp, or, if they

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do usurp, are compelled by law to restore and to be punished. We add that, in our time, such a private usurpation is impossible, and that Pope Pius IX, as we have said, renewed the law because of usurpations of ecclesiastical rights and goods committed by those who hold political power. Therefore, time, circumstances, and the legislator's intention and purpose limit the word "usurpers" to those who hold power, and not to private individuals who cannot truly and properly usurp. This, we believe, is better understood from the very act of usurpation, which defines and describes how someone claims an alien thing as their own, as if by right, or by definition, as if it were owed to them. Therefore, it is not theft or robbery. In usurpation, therefore, what is first and foremost required is that mental belief or consideration by which the usurper believes that the thing is his, or that he can claim it as his, because he believes he has a right to it; if we remove such a concept from the definition or nature of usurpation, then usurpation becomes theft or robbery, in which such a belief has no place. And from this, Commentary IX, section 1, of the Constitution of Leo, section 11, we understand why the act of a Cardinal's usurpation occurs if someone appropriates the goods of the Church, saying with authority, "I have a special right," that is, believing that the thing he takes belongs to him, and therefore, without observing the order of law, he takes it for himself. With these things established: since all things are divided and each belongs to individuals, societies, families, communities, it is impossible for a private person to induce the belief that goods, for example, do not belong to a person, nor to the Church, nor to this or that benefice, or at least that they do not have such a right in them that they can claim them for themselves with impunity; they know that they are not their own; therefore, in order to take such a belief, they must believe that they have some right, or a particular title, by which they believe that those goods are their own. But in such a case, the concept of usurpation is lacking, since there is a particular title by which someone believes that the thing is his. If, however, without any title, goods, or

[*Latin ed. p. 691*]

307. It is understood that only those with authority can commit the crime of usurpation. It is unclear how actions that involve the unlawful seizure of private property by individuals could also be considered usurpation under the same heading and with the same penalty. This is because the law in question is not intended to be extended to other cases or to other individuals. If a private individual were to seize property, it would not be considered usurpation, but rather theft or robbery; for he who takes the property of another without any title is a thief and a robber. Therefore, the crime of usurpation, properly speaking, cannot be attributed to private individuals, and it is not assumed that it applies to them. However, in the case of those who hold supreme power, this particular qualification, which some believe applies to ecclesiastical jurisdictions, is not required, since

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they consider everything to be permissible and due to them by reason of their power. Therefore, in the case of those who hold supreme power, the crime of usurpation is properly understood and does exist, even considering that they are superior to others and are not bound by the same restrictions. This is clear to many, as both in ancient times and now, and in the future, kings have usurped and will usurp rights and property, guided by the principle that all things are permitted to the supreme authority, especially if it is expedient.

However, if we consider the objects of usurpation more closely, we will better understand the matter. Those who usurp jurisdiction, property, or revenues belonging to ecclesiastical persons by reason of their churches or benefices are excommunicated. But no one can deny that the usurpation of jurisdiction can only be committed by someone who has power: how could any private individual, especially in these times, usurp the authority, for example, of a feudal lord, or of a bishop? Or how could a parish priest, having received jurisdiction, deprive another of it and arrogate it to himself without the permission or authority, or even the consent, of the government? For where laws exist by which one can defend and protect their rights, this is impossible without the permission, authority, or consent of the government. Therefore, in our time, private individuals cannot usurp ecclesiastical jurisdiction, whether temporal or spiritual. But for the same reasons, they cannot usurp the revenues that are the source and origin of that jurisdiction. Consequently, if lawmakers have ever enacted laws against usurpers, they have done so not in the strict sense of the word, but in a broader sense. These laws are, in fact, of a general nature. In our case, the matter is clearer because of the time, circumstances, and the intention of the legislator. From these, it seems to us that there is another reason for this, namely, to preserve the property of the Church. This reason, however, is both highly probable and based on a false premise. It is true that if those who hold political authority, or secular princes, usurp ecclesiastical property, the property of the Church will never be diminished; for if private individuals were to attempt to usurp it, they would immediately be brought to justice. The property of the Church should be feared from the usurpations of private individuals; for would thieves and robbers, especially if they stole valuable items, or if they failed to pay the Church's tithes, or for any reason did not contribute to the Church's property, would they not diminish the Church's property? However, these are not considered usurpers, and therefore they do not incur the penalty of excommunication.

Finally, we must consider a third argument, which is derived from the decree issued by the Holy Congregation of the Council on May 23, 1874. This decree was issued to curb the audacity of certain parish priests who,

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in the exercise of their office as parish priests or vicars,

[*Latin ed. p. 692*]

308 2°. Furthermore, in Chapter XI of the aforementioned Apostolic Constitution, Pope Pius IX speaks of unauthorized usurpations of authority. In addition to the arguments presented in that chapter, this is also demonstrated by the decree of the Supreme Sacred Congregation*, which inquired: "2. Whether the elected officials in Helvetia and Lombardy dared to perform the duties of the ecclesiastical ministry and to seize possessions and revenues." Against such actions, the pontifical voice resounded through encyclicals issued by Pope Pius IX on November 21, 1873 (Sacred Congregation of the Holy See, Vol. VII, p. 465, Acts). In these, he lamented and decreed the following: "Indeed, the same government (of G-ebenn) arrogated to itself the right to alter the constitution of the Catholic Church in that region, and to impose a democratic form upon it, subjecting the bishop, with regard to the exercise of his proper authority, and with regard to the delegation of his jurisdiction to authorities and administrations, both civil and otherwise, forbidding him from residing in that region; defining the number and boundaries of parishes, proposing the form and conditions for the election of pastors and vicars, and the cases and manner of their removal or suspension from office, granting laymen the right to nominate candidates, and entrusting laymen with the temporal administration of worship, and these, like inspectors, are generally subject to the laws, so that without the permission of the government, and without holding any office, they exercise no functions, and are not appointed." Furthermore, these dignitaries, who are subject to recall, and moreover, these pastors and vicars would receive powers greater than those they had obtained through the election of the people; and they would be compelled by civil authority to swear oaths in such terms that it is clear that such laws are not only invalid but also contain apostasy and are of no force. No one can deny that there is a complete lack of authority in lay legislators, and that they are often heretics, but also that they prescribe things that are contrary to the dogmas of the Catholic faith and the ecclesiastical discipline, which have been sanctioned by the Ecumenical Council of Trent and by Pontifical Constitutions, so that they must be entirely rejected and condemned by us. Therefore, in fulfillment of our office, we, with our Apostolic authority, hereby condemn and reject them; and we declare that it is unlawful and plainly sacrilegious to take the oath prescribed by them; and therefore, all those who, in the region of G-ebenn or elsewhere, dare to perform the duties of the ecclesiastical ministry, having been elected according to the decrees of these laws or in a similar manner, with the consent of the people and with the confirmation of civil authority, incur, by that very act, the greater excommunication, especially reserved to this Holy See, and other canonical penalties; and

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therefore, they must be avoided by all the faithful, according to the divine warning, as if they were strangers and thieves who come not to save, but to steal, kill, and destroy. Following these letters of the Roman Pontiff, a decree was issued by the Sacred Congregation of the Council on May 23, 1874, which, among other things, contained the following: "Indeed, this kind of outrage further reeks of the most heinous usurpation of jurisdiction, of the goods, and of the rights of the Church, which the Council of Trent subjected to an anathema as long as the usurpation continued, and which the Apostolic Constitution of October 14, 1869, declared to be subject to a general excommunication, in a special manner reserved to the Roman Pontiff. However, since these salutary canons of the Holy See have not deterred the audacity and wickedness of the innovators, so that the same abomination might not spread in other regions of Italy, which had recently been suppressed in neighboring Helvetia by Apostolic authority, the Most Holy Father, Pope Pius IX, with the greatest sorrow and charity, commanded this Sacred Congregation to take care of all the sheep of the Council against this evil."

[*Latin ed. p. 693*]

309. Those who purchase ecclesiastical goods from usurpers, do they incur excommunication, especially that reserved to the Roman Pontiff? To this it was answered: "By no means should one doubt that those who purchase ecclesiastical goods from usurpers incur excommunication reserved to the Roman Pontiff." But the usurpers of whom the question was proposed, and to whom the answer was given, are not other than the very princes themselves, or the very governments; for it is from these that ecclesiastical goods are usurped, and by these are private individuals deprived, who both purchase and sell. Therefore, that passage should not be extended to private usurpations. But those who usurp do not incur the excommunication of Trent, but that of the aforementioned passage. Therefore, the usurpations mentioned in the Tridentine passage are understood to be authoritative, not private. 3°. Furthermore, all the arguments presented in the preceding note apply to this matter; for private usurpations, properly speaking, are either impossible, or nearly so, and certainly very difficult, and are rather thefts and robberies, than usurpations in the true and proper sense; but laws are enacted concerning those things which frequently occur. From the words of the Tridentine passage, we do not perceive that there is a discussion of private usurpations, since it is about such acts that the same course of action should be followed: therefore, it was ordered that the Ecclesiastical Provinces of Venice and Milan, and all the dioceses subject to patriarchal and metropolitan jurisdiction, should apply and inculcate, as they are now applying and inculcating, all those things which, with regard to the popular election of pastors, have been most wisely established in the most recent Encyclical letters of November

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21, 1873; so that whoever in the aforementioned dioceses, with the consent of the people, dares to be elected to the office of pastor or vicar, and to seize the possession of the Church, or of its rights and goods, and to perform the duties of ecclesiastical ministry, incurs, by that very act, a major excommunication especially reserved to the Holy See, and other canonical penalties, etc. Acts of the Holy See, Volume VIII, page 702. Furthermore, from such a decree, it concludes: "Now, neither pastors nor vicars possess public authority, as is required by the aforementioned opinion." But, did private individuals possess such authority, to intrude themselves into parishes? And is it not rather by that authority with which they are supported by the Gebennese government? Is it not by the force of laws which Pope Pius IX solemnly repudiated and condemned? Therefore, the decree of the Holy Congregation is recognized as favorable to our opinion, and not contrary to it. Indeed, those were private individuals who were the intruders. But could they, unless armed with public authority, and by the force of laws, expel legitimate pastors, and usurp their rights? Certainly not. Usurpation of the Church, at least in our time, is not understood without public authority. However, it is irrelevant that those who exercise the usurped jurisdiction are private individuals; for in such crimes, this is always the case.

[*Latin ed. p. 694*]

310 and actions, namely the usurpation of jurisdictions, goods, revenues, even feudal and emphyteutical rights, fruits, emoluments, and any other possessions of a Church, of any secular benefice, of a Monte di Pietà, or other pious institutions, we do not see how these can be admitted and brought to an end by private individuals; for all these things are under the protection of existing laws, and there are lords and administrators who certainly watch over their affairs and the preservation of the Church, and who, unless they are complicit, do not allow the goods entrusted to them to be plundered by anyone in their presence (for usurpation requires a public act). We perceive this even from the adversaries themselves, who, in order to extend the meaning of "usurpation" in the Tridentine chapter to private individuals, interpret it improperly, that is, as any unjust action by which someone invades and steals the goods of the aforementioned places. Thus Bonacina. But let no one forget that in a hateful law, words must be interpreted strictly; let no one forget that if we take "usurpation," as understood by Bonacina, to mean the action described in the Tridentine chapter, this action must be extended to any serious theft that can be said to be included in usurpation, which is something that will be difficult to prove, as we will see below. But what about this? Does not everything else follow? For secular rulers enact the most unjust laws against ecclesiastical rights; but new laws established by secular rulers are enforced by private individuals; for they themselves do not perform episcopal or parochial duties. However, we must address the difficulties. Could not a priest and

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a bishop, supported by popular force, drive away legitimate pastors and usurp their jurisdiction, goods, and revenues? Although they may believe that this can happen, with regard to the expulsion of pastors, especially of parish priests, we believe it to be very difficult for intruders to maintain themselves in the usurped jurisdiction without public authority, let alone to arrogate goods and revenues to themselves; but in solidly established states, such things occur very rarely, and require, for the most part, the approval of the government. Usurpations are not committed without the permission and consent of the government; and if they are admitted, they immediately cease. Is not popular force also public force? Nevertheless, it does not seem that Pope Pius IX, in chapter XI of the cited work, intended to threaten with excommunication those usurpations that cannot endure and that rarely occur; but rather, those authentic usurpations, which are committed by authority; which, as we have said, is clear, but also, no private person can seize jurisdictions and goods from a church, since, except for a voluntary sequestration, which is not the subject of our discussion in this chapter, a judicial sentence is required for sequestration. To these, we must add the arguments that we will draw from a certain declaration of the Supreme Inquisition. Let the readers excuse us if we have detained them longer than necessary. But we are dealing with excommunication, which must not be imposed on anyone without certain and evident proof. But in the chapter of Piano, we believe that it is either false, or at least very doubtful, that we are dealing with private usurpations. But in case of doubt, everyone knows that the least objectionable course must be followed.

[*Latin ed. p. 695*]

311. Are the actions which are subject to excommunication in Chapter XI of the Council of Trent authoritative and perpetual? It does not seem so to us, and we submit this for the consideration of our readers.

1. The Fathers of Trent include all persons, whether ecclesiastical or secular. "Whether he be of the clergy, or a layman, of whatever rank, even imperial or royal." These words are entirely general, and include all persons. For a better understanding, it should be noted that the term "dignity" is attributed only to laymen, not to clerics. Therefore, when the term "clergy" is used, it is understood to refer primarily to lower clergy, and it is to be understood that the Fathers of Trent also spoke of them; and the same should be understood of laymen, among whom must be included kings and emperors, who, with respect to penalties, are not considered to be included in the law unless they are expressly mentioned; thus, the language of Trent is equivalent to this: "If any layman, etc., has been constituted in an imperial or royal dignity; he is therefore also included among private persons."

2. If the clergy or laity of whom the Fathers of Trent speak are only persons constituted in a dignity, even the patron of the Church, of whom

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they speak below, will be a person constituted in a dignity. But this can be a cleric or a layman; and clerics are certainly also private persons, as we have said; and the same can be said of laymen. Therefore, a patron of this kind can also be a private person.

3. Those who receive goods belonging to the Church, in any way, even by donation from a private person, also incur excommunication. But it is very difficult to understand how this would include only kings and emperors.

4. According to the decree of the Supreme Inquisition, those who purchase ecclesiastical goods from usurpers are subject to the excommunication of Trent. "Indeed," say the Inquisitors, "setting aside the question of whether the aforementioned purchase is in any way affected by Article XI of the Apostolic See's Constitution, there can be no doubt that it is included in the clear provision of Chapter XI on Reform, Session XXII of the Council of Trent." But if the actions which are subject to excommunication in Chapter XI of Trent were all authoritative and perpetual, private persons purchasing ecclesiastical goods from usurpers, that is, from the highest rulers who have usurped them, would not be subject to this excommunication.

[*Latin ed. p. 696*]

312 5°. Pope Pius IX, in an address given on July 25, 1873 (1), openly affirms that those who purchase ecclesiastical property incur this censure of Trent. "Indeed," he says, "we are compelled by the duty of defending the rights of the Church, by the desire to warn the unwary, and by charity towards the erring, to proclaim with a loud voice to all those who, having proposed this aforementioned law, have not feared to approve and enact it; and to declare that not only is whatever they may do or intend to do in this matter invalid, null and void, but that they themselves, along with those who command, support, advise, adhere to, or execute [this law], and with those who purchase ecclesiastical property, are to be bound by a greater excommunication, and by other ecclesiastical censures and penalties, according to the sacred canons, the Apostolic Constitutions, and the decrees of the general councils, especially those of Trent." He further states that they incur the "severest divine retribution" and "run the risk of eternal damnation."

However, we know of no other canon in the Council of Trent that binds purchasers of ecclesiastical property with excommunication, except for the one we are discussing. But purchasers are, above all, private individuals; therefore, their actions are not to be excluded by the canon of Trent.

Therefore, we believe that, in the canon of Trent, there are actions that are both authoritative and potential, and which incur excommunication, and that these actions can also be those of private individuals; but that these actions are to be distinguished by the subject matter and by the very nature of the action itself. Thus, to be clear, the usurpation of jurisdictions and feudal rights, of emphyteusis, of the assets of pious foundations, and of

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stable ecclesiastical properties, such as houses, land, and their fruits, etc., is an authoritative and potential action, as we have demonstrated. In its proper sense, an authoritative action is to prevent the fruits and revenues of the Church from being received by those to whom they rightfully belong; for this requires authority and power; indeed, without this, any impediment by particular individuals, even if invoked by public authority, would immediately cease.

Furthermore, among those who are to be considered usurpers and those who convert [property] to their own use, are also emperors and kings, so that we may understand that at least some of the prohibited actions proceed authoritatively and potentially. Although all [actions] are, in a sense, those of private individuals, since even those who demand the authority and power of the king cannot exercise it without him; he, therefore, can best exercise what private individuals can do. But what other actions are there, except those that are either committed only by the highest princes, or without their authority?

[*Latin ed. p. 697*]

313 non possunt? Therefore, it seems to us that the criterion for distinguishing actions prohibited under the Tridentine canons is this: those actions which cannot be committed without the authority of the highest prelates are to be considered authoritative and should be so regarded; while those actions which can also be carried out by private individuals, either because the highest authority is not required for them, or because it can easily be circumvented, should be considered private. Thus, the conversion of movable goods, for example, money, grain, and fruits, and even some acquisitions, can be carried out even by private individuals for their own use; likewise, ecclesiastical goods can come to private individuals through donations, or in some other way; and therefore, even a purchase, under this title, is included under the Tridentine canons, since that adverb "in any way" includes any act by which ecclesiastical goods can come into the hands of others. Hence, the opinion of the learned commentator Reatini must be rejected, at least in part, who in his Commentary, page 56, Note 40, Edition 3, 1880, states: "This decree does not apply to those who occupy [ecclesiastical] goods, but to those who commit acts that are both actual and potential." De Luca, Ad Trident., this title, Disputation 23, indeed, some prohibited actions must proceed both authoritatively and potentially, since they cannot be carried out by private individuals; but not all, as we have said above. However, we fully agree with the learned commentator in what he adds, that not every conversion of ecclesiastical goods for one's own use, or any unjust acquisition, is subject to excommunication. "Indeed," he says, and rightly so, "if anyone converts anything, or even a measure of grain, or an amphora of oil, in any way for his own use; for example, a conductor who

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does not receive his wages, a renter, a depositary who does not return the thing, anyone who cuts down a tree, or who enters the boundaries of a field, or who places a building on the boundary, incurs excommunication; otherwise, the Church would be filled with excommunications, which seems alien to the intention of Trent." (1) Therefore, this decree does not apply to those who collect or prevent the collection of tithes, which is a separate matter. (2) "Although the sword of excommunication is the nerve of ecclesiastical discipline, and is very salutary for restraining those in office, it must nevertheless be exercised with moderation and great circumspection, since experience teaches that if it is rashly or lightly applied to trivial matters, it will be more likely to be scorned than feared, and will cause more harm than good." (2) Indeed, the Tridentine canon on excommunication applies to those who do not pay, or who prevent the payment of...

[*Latin ed. p. 698*]

314. "What is it that the use of this decree is exceedingly rare in the Roman Curia? It condemns: the easy abuse of those who, while also acting against private debtors who, under some pretext, do not pay tithes, or canons, or *livelli*, or other dues at the established times, proceed to these penalties; or against those who, under some pretext of private rights, possess goods that are alleged to belong to the Church, or to pious institutions."

However, the latter, as observed by the most distinguished author from Lucca, do not seem to pertain to the matter, since it is a question of debtors who, although under some pretext, do not pay at the established times, and therefore are in arrears in payment; therefore, it is not about those who do not want to pay, so that they may convert the Church's revenues to their own use; nor is it about those who have taken those goods for themselves under the pretext that they belong to the Church or to pious institutions; but rather, under a pretext, and therefore not under a certain right; therefore, about goods concerning which there is doubt as to whether they rightfully belong to the Church.

However, since the use of this decree is exceedingly rare in the Roman Curia, and, on the contrary, the conversion of Church goods, especially their fruits, to private use is very frequent, we understand that not all actions of this kind are subject to excommunication according to the Tridentine decree, but only those that, so to speak, have a special character, due to manifest injustice, unrighteousness, violence, fraud, or a perversity of spirit against the Church, or a claim under which someone believes that the rights and goods of the Church belong to them, all of which are perfectly understood from the reading of the chapter. Indeed, the Fathers of Trent use solemn words from the beginning. If anyone among the clergy or laity is the root of so much evil, hindering it, it is a sentence to be imposed, but

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not a sentence to be endured, as it is clear from Session XX, Chapter XI on Reform: "Those who, by various means, attempt to subtract tithes due to the Churches, or who recklessly seize them from others and convert them to their own use, are to be punished, since the payment of tithes is due to God, and those who refuse to give them, or who prevent others from giving them, invade the property of others. Therefore, the Holy Synod commands all, of whatever rank or condition, to whom the payment of tithes is due, to duly pay them in the future, to the cathedral or to whatever other Churches or persons to whom they are legitimately owed. Those who seize or prevent the payment of tithes are to be excommunicated, and they shall not be absolved from this crime except by full restitution."

Since the excommunication in Session XII, Chapter XI, which we are discussing, is a sentence to be imposed, it is evident that those who seize, or do not pay, or prevent the payment of tithes, and convert them to their own use, are not included in this chapter. Therefore, not every conversion of Church goods to private use is subject to excommunication in the Tridentine decree.

[*Latin ed. p. 699*]

315. The truths which seem hyperbolic, if they are applied to any illicit conversion of ecclesiastical goods into private use, and to those actions which the Commentator Reatinus has enumerated above; then, no less solemnly, they speak of the various goods, rights, and jurisdictions which clerics or laymen seize and convert to their own use; of which some, scarcely or not at all, can be converted to private use by private individuals; finally, they speak of the seizure and conversion of these goods into private use, either by themselves or by others, through violence or fear instilled, or even through supposed persons of the laity or clergy, or by any artifice, or by any pretext whatsoever, which cannot at all be understood of those actions, and similar ones, which the aforementioned Commentator Reatinus has enumerated. Nor can these things be understood of the cooperation of a cleric; for the words: "But the cleric who has been the fabricator or accomplice of such nefarious frauds and usurpations, etc.," refer to all the actions which the Fathers of Trent condemned. But can these things be said of any theft, of any subtraction of fruits, revenues, etc., of the Church? In our judgment, the Fathers of Trent would appear ridiculous if they spoke so solemnly, and imposed such severe penalties, if they had spoken of any trifling matter concerning ecclesiastical goods, and had carried it out in any way. Therefore, they spoke of matters of great importance, of usurpations, and of the conversion of ecclesiastical goods into private use, carried out with special malice; and of those things which were done contrary to the special prohibition of the Church, and in contempt of it, just as happens with the purchasers of ecclesiastical goods, and not of any and almost daily occurrences. And we say this with greater confidence, because we have

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demonstrated that many of the prohibited actions are potential and authoritative, and do not pertain to private individuals; others follow, such as buying Church goods from usurpers; others have special malice and fraud, if administrators of ecclesiastical goods convert the revenues received from the goods of which they are in charge into their own use, without any intention whatsoever of restoring them, and are of great importance; and others of this kind. Furthermore, the cleric who is the fabricator or accomplice of nefarious frauds, causes the patron of the Church not only to be considered a patron, but also a lord; or suggests to the prince a way in which he can obtain possession of the goods and revenues of the Church; or persuades him, with a clear conscience, to be the lord of all the goods, even those belonging to Churches and pious foundations, in general, or in particular to that Church, monastery, benefice, bishopric, etc., and the prince then acts upon the ecclesiastical goods.

[*Latin ed. p. 700*]

316 that greedy hand, which seizes and converts to its own use. From what has been said, we infer the following: 1°. That in Trent, actions are forbidden which are both potential and authoritative. 2°. That there are also actions which can be performed, and are performed, by private individuals. 3°. That these actions, however, must be characterized by either disobedience or malice. 4°. Therefore, among the forbidden actions, those of lesser importance, or those that are imminent, such as denying wages, cutting down a tree, stealing grapes, olives, or fruit, etc., are not to be included, since the Fathers of Trent do not speak of such things. Therefore, in order to determine who, from this chapter, incurs excommunication, we believe it is necessary to consider the nature and malice of the action. Thus, if the action is of minor importance, and has no special malice or fraud, or if it does not involve a clear disobedience to the explicit mandates of the Church, we should not consider it to be included in this present excommunication; otherwise, if a private action (for potential and authoritative actions always encompass these three) is surrounded by these circumstances.

Now, let us inquire: 1°. Which persons are subject to this excommunication? And indeed, from what has been said, it is clear that this is a universal law, and that it includes all clerics, and even laypersons adorned with royal and imperial dignity; consequently, no one is excluded who, whether by himself or through others, by force or by intimidation, or even through supposed persons of the clergy or laity, or by any artifice, or under any pretext, seizes the jurisdiction, goods, revenues, and even feudal and emphyteutical rights, fruits, emoluments, or any other acquisitions which should be converted to the needs of ministers and the poor, or prevents those to whom they rightfully belong from receiving them. However, since excommunication depends on the quality and special malice of the action, private individuals should never be considered excommunicated, unless

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they commit an action and incur guilt, which is clearly included in the law, as we have indicated above.

2°. Hence, we proceed to enumerate the actions. And as far as usurpation is concerned, we have already proven that it is both authoritative and potential; as we have also said, and it is evident, that usurpations of the goods of the Church, of other pious institutions, and of the Monti di Pietà, and furthermore of feudal and emphyteutical rights, must be authoritative, since these usurpations are...

[*Latin ed. p. 701*]

317. Certain persons are unable to fulfill these obligations, just as these [provisions] cannot truly and properly prevent any ecclesiastical revenues from being received by those to whom they rightfully belong; for this requires public authority, since it exceeds the power and jurisdiction of private individuals. Nor do we find fault with the opinion that all actions, concerning which we speak in the chapter of Trent, are, at least from the beginning, authoritative and effective; namely, for clerics, they are enacted by bishops, cardinals, and abbots, and other ecclesiastical persons who hold a benefice to which many goods are attached, and who have jurisdiction over a certain territory; but for laymen, by the highest princes, or civil governments, whatever their name may be. Consequently, private individuals are not excluded, who purchase or acquire usurped or invaded goods, or to whom they are transferred by a legate, by inheritance, or by donation, or who transfer them to heirs or others; both because of the aforementioned declaration of the Supreme Sacred Congregation, and because of the allocution of Pope Pius IX, and also for the reasons which we have explained above. Therefore, 1°. Those who convert ecclesiastical goods to their own use are excommunicated, whoever they may be; whether, that is to say, to pay debts, or to sustain the expenses of war, or to demolish buildings, to buy goods, to conduct business, etc. For since the goods of the Church are to be used to sustain the worship of God, the support of ministers, and the needs of the poor, it is sacrilegious to expend them for other purposes. 2°. Those who are usurpers are excommunicated; of whom we have spoken above. For this reason, the highest princes who usurp ecclesiastical goods, and who sell them, or apply them to other uses, are not exempt from excommunication by any means, not by this [canon], but by Chapter XI of the Apostolic Constitution. 3°. Those who prevent ecclesiastical revenues of any kind from being received by those to whom they rightfully belong are excommunicated. To prevent is to effect that someone, unwillingly and against his will, relinquishes a work or action which he intends to perform. Therefore, those who, by force, threats, or authority, prevent others are excommunicated; but not those who, by prayers, exhortations, and even by offering money, since these cannot constitute an impediment, for to prevent, by its very nature, implies a violent action in some way; but those who,

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by prayers, money, or exhortations, cause a lawful work to be abandoned, act of their own will and malice; and are not, in any way, prevented; but the law, being strict, must be understood in a strict sense. We do not believe that such an impediment applies to private individuals; both because the Fathers of Trent seem to be speaking of an open impediment, and because those to whom the revenues rightfully belong, are protected by the force of laws, and by authority.

[*Latin ed. p. 702*]

318. The judge can immediately reclaim what belongs to him. No argument can be drawn from any arbitrary phrase or question to establish a contrary judgment; for the first of these formulas implies machinations, deceptions, and frauds; the others contain various, but false, titles, or pretexts, under which justice seems to be pretended or feigned, as we shall explain more fully below. Under these titles, neither prayers, nor exhortations, nor the offering of money can be admitted. 4°. Those who command prohibited actions, or any part thereof, are clearly included under the words "usurping, etc., presumptuously, by himself or others"; for he who acts through another, is the commander. However, those who command prohibited actions incur excommunication upon the execution thereof, just as do all others who commit prohibited actions; for in the chapter, usurpation is prohibited, the conversion to one's own use, and the hindering of goods belonging to the Church from reaching those to whom they rightfully belong; all of which are understood only upon execution. Therefore, if anyone commands any of the prohibited actions and is unable to carry them out, he does not incur excommunication for the attempted act. 5°. Those who, in any way, receive goods that have been usurped, whether by donation, purchase, inheritance, etc., the adverb "in any way" includes any mode of transmission. However, cases have occurred and may occur concerning such matters that need to be explained. Titus, besides the property he owns, purchased from usurpers a church estate. When his property is seized, everything he has is sold at auction, including the church estate. Gaius bought it. What? R. Gaius does not seem to incur the excommunication of the Chapter of Trent. For, in order to incur this, it is necessary that the purchase be directly directed towards the things and goods of the Church. But in the case proposed, the purchase is cumulative, indeed primarily pertains to the goods that belonged to Titus. Gaius, therefore, should have bought either all the goods, or none; but no one could legally deprive Gaius of the right to purchase Titus's goods, nor should he suffer a grave detriment on account of the church property attached to them; therefore, since Church law does not obligate with a grave detriment, and since the purchase primarily pertains to goods that are Titus's own, Gaius cannot be excommunicated if he also bought that church property at the same time; for the contract is one in kind, and primarily pertains to the goods that he was legitimately able to

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purchase. Consequently, it does not follow that the Church loses its rights to that property; but we are speaking of excommunication. Let another case arise. Usurpata a gu-

[*Latin ed. p. 703*]

319. Certain lands belonging to a Monastery were subject to the rights of pasture and timber-taking by the Municipality. Subsequently, John purchased these lands. Since John wished to acquire the purchased lands free from any servitudes, he made an agreement with the Municipality, whereby he would cede to the Municipality certain lands in property, thereby freeing the remaining lands from the burden of the rights of pasture and timber-taking. The Municipality accepted the agreement and ordered its execution. Did they incur the Tridentine excommunication? No. For the Municipality did not purchase anything, but rather obtained an equivalent through a certain exchange of goods. For if the right of pasture and timber-taking represented a sum of ten thousand pounds, and the Municipality received lands in property of the same value, then the Municipality certainly gained nothing, nor did it take anything from the goods of the Church; for that sum would have been due to the Municipality even from the Prefects of the Monastery, to which the goods belonged. Moreover, the Municipality lost nothing: for since the usurped goods were burdened with the obligation of timber-taking and pasture, they were worth less with that burden. However, if it should happen that the Monastery regains possession of the usurped lands, even if their quantity has been diminished, the lands which it regains possession of are valued at a higher price, since they are free from the burden of the servitude. Therefore, in this hypothesis, the Monastery would have lost nothing at all; and consequently, for this reason, the Municipality could not have incurred any excommunication. For they received only what belonged to the Municipality, and nothing else; and they could not be prevented from accepting the agreement, especially if there were legal disputes, and the good of the community required it. Angelus, without proper authorization, freed certain lands from the jurisdiction of a certain canon, who enjoyed the right of patronage over them, and claimed them again for himself and his sons, paying the necessary sum. He then sold them to Pacificus, who, before entering into the contract, asked a learned and prudent ecclesiastic whether he would incur excommunication by purchasing the aforementioned lands. The ecclesiastic replied in the negative. Therefore, Pacificus entered into the contract. Are Angelus and Pacificus to be considered excommunicated? There is no doubt that Angelus incurred excommunication, for he truly purchased a portion of ecclesiastical goods that the treasury had appropriated; and therefore he paid thirty percent on each. Since he did this knowingly and prudently, he cannot be excused; for those lands which the treasury had usurped,

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and which Angelus purchased with money, were ecclesiastical goods. But Pacificus, before purchasing them, sought advice from a prudent and learned man, who, after replying that he would incur no excommunication,

[*Latin ed. p. 704*]

320. It is manifest that if one were to incur a penalty for communication [with excommunicated persons] by acquiring certain goods, and that, having received such advice, Pacificus acquired them, it is clear that he acted in all good faith, and that he acquired them without any sin and without any contempt for ecclesiastical law. However, excommunication is not incurred without sin. Therefore, as long as Pacificus remains in good faith, he should not be considered excommunicated.

6°. Patrons are excommunicated who, without consultation and against the order of the ordinary, emancipate properties belonging to chapels, benefices, and the Church.

7°. Likewise, those who redeem properties that have been granted in perpetuity, or for a fixed term, in exchange for a canon; for these acquire both the direct right and the useful dominion for themselves; while those who purchase redeem a canon that belongs to the Church, and render the property entirely free.

8°. Similarly, those who redeem censuses, canons, etc., which, by law or agreement, are irredeemable. However, those who receive ecclesiastical goods in perpetuity, or lease them, are not subject to this. For their action is not included among the prohibitions mentioned in the Tridentine canons, as is evident.

9°. Finally, clerics, and not laymen, are excommunicated if they have been guilty of infamous fraud, or have been accomplices.

What, then, about thieves? From what we have already discussed, we believe that these are not included under the Tridentine canons. However, cf. the authors in *La Nouvelle Revue théologique*, Vol. X, p. 629, and the Patavinus commentator, n. 113, p. 227, who assert that thieves are subject to this Tridentine excommunication. And they attempt to demonstrate this by:

1°. By the words of the law, which are entirely general: "by any means, or by any pretext."

2°. By a certain declaration of the Holy Congregation of the Council, cited by Pignatelli: *Consultationes canonicae*, Vol. VII, Consult. XI, n. 5, which reads: "This decree" (the Tridentine one) "does not apply when the lord of the benefice cuts down fruit-bearing trees, and converts them to his own advantage; but it applies to those who cut down trees with the intention of stealing."

3°. They say that this is in conformity with both the letter and the spirit, or the purpose, of the law; with the letter, because the excommunication

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applies to all who convert ecclesiastical revenues to their own use, and who presume to usurp them; with the spirit, or the purpose, intended by the legislator, which is to preserve ecclesiastical goods for the uses for which they were destined.

The Patavinus commentator, however, is led to conclude that thieves are subject to the Tridentine excommunication only by the authority of Bonacina, and by the words of the law. "Therefore," he writes, "the Tridentine decree does not only encompass..."

[*Latin ed. p. 705*]

Those who, under the name of "usurpers," but also any others who invade, occupy, or steal, by a single word, all those who, by any artifice or under any pretext, violate ecclesiastical rights or goods, and convert them to their own use. However, we are not led to concede that thieves are subject to excommunication under Trent. Indeed, it would suffice to prove our point that the Fathers of Trent demanded presumption against those who engage in prohibited actions; but presumption is not properly attributed to thieves and robbers in the strict sense; for these are led by the presumption that they may steal whatever they can, from whomever it may be, and wherever it may be, without ever knowing to whom the stolen goods belong.

2° How could the Fathers of Trent have uttered such a solemn introduction: "If the root of all evils has seized anyone in greed?" They are speaking of those who are not thieves, but who, at times, may be led to steal by an improper greed.

3° If the objects are extended to which the root of all greed extends, it will manifestly appear that the discourse is not about thieves in the strict sense.

4° When the opponents say that, in a broader sense, "usurpers" are to be understood as any action by which someone invades and steals any ecclesiastical good, then thieves and robbers are also "usurpers"; but those who "usurp" do not incur the excommunication of Trent, but incur the wider excommunication in Chapter XI, title 1 of the Apostolic Constitution. Therefore, thieves and robbers incur that excommunication to the extent that they "usurp." But everyone knows that the Supreme Sacred Congregation declared on March 9, 1870, that these are not included under that chapter.

5° Finally, let us use the argument employed by the learned Commentator Patavinus, no. 313, namely, the various faculties that were granted to confessors by the Holy Penitentiary for the Jubilee years of 1869 and 1875. It is clear from these responses that, for the occasion of the Jubilee, confessors were granted the faculty to absolve those who had acquired and possessed ecclesiastical immovable property alienated from the public

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domain (from Resp. 4), and those who had acquired ecclesiastical movable property (from Resp. 6), and those who had received in lease ecclesiastical property occupied or alienated from the public domain (from Resp. 7), and even those who had received the same property from the government in emphyteusis (from Resp. (1) This declaration is referred to in our Commentary, Vol. I, page 368.

[*Latin ed. p. 706*]

8) ; also, those who had redeemed censuses, canons, and other ecclesiastical rights, whether those rights were of a nature that could be redeemed or not. (From responses 9, 10, 11.) "Indeed," the esteemed commentator continues, "please, what great powers have been granted to confessors during the Jubilee year?" The only certain reason, he says, is because in each specific case, some penalty was imposed on penitents, and indeed, reserved. But in those same cases, excommunication, especially reserved by Article XI, did not apply, because neither true usurpation nor strict appropriation was present; therefore, the Tridentine excommunication was not applicable. Therefore, those words of the Council should be understood as referring to the conversion to one's own use and the appropriation of any unjust occupation or invasion of ecclesiastical goods. But with all due respect, sir. The consequence is clearer than the premise. If the powers granted are for those actions that he himself enumerated; then the excommunication will be for those actions, and not for others. Therefore, on what basis can one infer that the Tridentine excommunication extends to any unjust occupation and invasion, and therefore also to thieves? What if we construct the argument in this way? It is certain that in the case of those persons who are to be absolved, and to whom the Penitentiary [Apostolic Penitentiary] granted powers, neither thieves nor robbers can be included. Therefore, the Penitentiary, by its action, judged that thieves and robbers are not included under the Tridentine decree. Otherwise, would it not have granted them the power to be absolved? Furthermore, the Penitentiary granted the power to absolve even those who had taken possession of property usurped from the public domain, either through lease or through emphyteusis. But we do not know when and where this excommunication was imposed, unless we are speaking of a perpetual lease and emphyteusis.

(1) (1) Indeed, if these individuals incurred excommunication, either by the extravagantly ambitious decree concerning the non-alienation of ecclesiastical goods, or by the force of the Tridentine decree, to the extent that lessees and emphyteutes convert to their own use the profits resulting from leases and emphyteusis, or by some decree or declaration of the Most Reverend Congregations. But not by the extravagantly ambitious decree, because there, ecclesiastical goods are prohibited from being leased or given in emphyteusis to clerics; nor by the force of the Tridentine decree, because there, the words "usurp" and "convert to one's own use"

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do not indicate profits received from leases or emphyteusis, which also come from the industry and labor of people, but from other sources, as is clear from reading the chapter. Therefore, lessees and emphyteutes could certainly be denied absolution if they did not observe the laws imposed by the Penitentiary concerning such leases; but not because they incurred excommunication. Therefore, confessors have the power to absolve...

[*Latin ed. p. 707*]

323. Neither do the arguments presented by the adversaries appear to us to be so solid as to be irrefragable. Firstly, the plea derived from the words of the law, whether by some artifice or by some dubious interpretation, with which they intend to demonstrate that a general law exists, is manifestly refuted by the fact that thieves and robbers do not require, nor do they use, these devices for their thefts; moreover, those formulas signify something entirely different. Namely, by any words whatsoever, deceit of any kind can be signified, by which someone converts ecclesiastical goods to his own use; but by words with a certain intent, it is conceded to sell, with the obligation relaxed to which they were bound by the decrees of the law. Therefore, tenants and those who hold property under lease cannot, from this point, be excommunicated. Certainly, contrary to what we have said about tenants, someone might present the response given by the Holy Congregation of the Council to the Bishop of Melita, which is also cited by the Holy Congregation in the *Collectio Concilii, V. Alienatio omnium §. 3 conclusionum et resolutionum n. 12*. The Bishop of Melita had indeed asked: 1. Whether those who, without the consent of the Apostolic See, after the publication of the Holy Council of Trent, have permanently leased, rented, exchanged, or otherwise alienated ecclesiastical property, and have received the alienated property, are subject to the penalties of Chapter XI of said Council? 2. Whether those who, before the publication of the aforementioned Council, in the session XXII, *De Reformatione*, have alienated property belonging to the clergy, and have held it, at least for 25 or 40 years, knowingly, and refuse to restore it to those to whom it rightfully belongs, are to be considered subject to the same penalties? Furthermore, the Holy Congregation responded: To 1. They are subject to them, if they did not require the consent of the Apostolic See. To 2. They have incurred them, and will continue to be subject to them, as long as they do not restore the property with its fruits. Such a declaration, I say, does not undermine our opinion; since it deals with perpetual leases, rentals, exchanges, or properly called alienations; but in our case, we are usually dealing with leases or rentals for a time, for which reason neither this declaration nor the decree of Trent applies. Otherwise, it must be said regarding perpetual contracts. But it is also evident that those who rent ecclesiastical property for a time receive profits and convert them to their own use; therefore, since these are not included in the laws and decrees promulgated, they are said not

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to incur excommunication. Therefore, they have been given the power to absolve them, not with respect to excommunication, but for other reasons. (1) This deceit is certainly a bad deceit, about which the following is said in Vicat's Dictionary of Law, under the heading "Dolus malus": C. Aquila Gallus, as Cicero writes in *De Officiis*, book 3, chapter 14, defined "dolus malus" as: "when one thing is done, another is feigned." D. Augustine, Sermon 22, *De Jacobo et Esau*: "Therefore, what is deceit? When one thing is done, another is feigned. When, therefore, one thing is in intention, another is in deeds, deceit is said to be done by cunning and deception." Ulpianus: Aquila defined "dolus malus" as: "all cunning, deception, and machination, to circumvent, to deceive."

[*Latin ed. p. 708*]

324. By "color," the same thing is meant, and this applies regardless of the pretext; for it is said that a "color" is sought when someone, while truly acting in a certain way, conceals it with some pretense, either to evade the law, or for some other reason. In the *Dictionarium iuris* by Vicat, at the entries for "ars" and "color," in the 2nd declaration presented by the Most Reverend Pignatelli, Volume VII, Consultation XI, number 5, we first present the one cited in the aforementioned number 9, where Pignatelli writes that on February 27, 1596, it was stated: "Those who steal things belonging to the Church or to pious institutions do not incur excommunication by the Bull of Union, nor are they subject to the penalties prescribed by the Council." Furthermore, we refer to Chapter XI concerning the excommunicated, where the Supreme Inquisition was questioned on March 9, 1870: "Under what name are those who are understood as 'usurpers' to be considered 'thieves' who enjoy the fruits of benefices?" The response was: "Those who care for their own are not to be considered 'thieves'." However, thieves are included only under the title of usurpation in the Tridentine canons; for the conversion of ecclesiastical goods to one's own use cannot come under the title of theft; but thieves are not to be included among the usurpers. Therefore, they do not incur the Tridentine excommunication. But it is not true that the opposing view is in conformity with the obvious meaning of the words, or with the purpose intended by the legislator in the law. The words of the law must be interpreted strictly and precisely. But under the Tridentine words: "to seize" and "to usurp" for one's own use, the opponents claim that theft is implied, which they must first prove. Would they also say that these are truly thieves who usurp and convert the goods of the Church to their own use? Therefore, what is the difference between usurpation and theft, if usurpation and theft are one and the same thing? Moreover, do not those who steal the fruits of benefices both usurp and convert them to their own use? How then are they not included among the usurpers? In the aforementioned law, each word must retain its proper and natural meaning, lest we extend the law beyond its intended scope;

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and since theft does not come under the name of usurpation, nor under the name of conversion to one's own use, in its proper sense, we believe it is false that the opinion of the opponents is in conformity with the obvious meaning of the words. But neither is it in conformity with the spirit of the law, or with the purpose intended by the legislator. All reasons suggest that, as we have already pointed out in our commentaries on the law, the scope of the law should include that which is circumscribed by the words of the law, and not any other, lest we be deceived. Deception seems to be defined as any word or deed with the intention of deceiving another; and a malicious deception is that in which the intention is to cause harm or injury to another.

[*Latin ed. p. 709*]

325. A hateful law was to be extended, and therefore, from the end, it was requested by the adversaries, and the most acceptable canon was drawn up, extending beyond the minds of the Legislators; consequently, it is highly disapproved. Usurpation and the conversion of ecclesiastical goods to private uses are prohibited. Furthermore, it is intended to prevent these goods from being received by those to whom they rightfully belong; but under such terms, the aforementioned theft is not included, as it clearly appears from the words presumed by the text; for presumption is not admitted, nor is it required in cases of theft. We add that it seems foreign to the mind of the Church that excommunication should be incurred for a simple theft; we add that if we admit this, excommunication must be used for every theft, which pertains to a grave matter: for even with these thefts, the patrimony of the Church is diminished, and the goods of the Church, which are destined for a specific purpose, are diverted; therefore, if those who steal are, according to the ecclesiastical condition of persons, ten, five, three, and even one, they will be excommunicated. This would inflict a most grievous injustice upon the Church, inasmuch as it would encourage, with such severity and zeal, the avoidance of excommunication for these petty offenses. Furthermore, the mind of the Fathers of Trent is not evident from all the words with which they use the term "goods." It is incongruous and unjust to include under the term "theft" those things which the Fathers of Trent did not name as theft. *Alienantes et recipere praesumentes*. Vol. II, page 146.

[*Latin ed. p. 710*]

326. Furthermore, We have learned from the Roman Pontiff, Pope Pius IX, that the interdict was not imposed upon all those who incurred the penalties mentioned in the alleged Sacred Penitentiary Instruction. Therefore, it does not follow that all those who are absolved in various ways through penance in that Instruction have incurred excommunication, and must be absolved from it. Regarding this matter, in the Apostolic Letters

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of Pope Pius IX, dated April 11, 1869, confessors were granted the faculty of absolving penitents in the forum of conscience, and for that occasion only, not only from excommunication, suspension, and other ecclesiastical sentences and censures imposed by law or by any person for any reason, except as otherwise specified herein: but also from all sins, excesses, crimes, and offenses, however grave and enormous, even those reserved to the local Ordinaries, or to Us and the Apostolic See, with a special form, and whose absolution was not otherwise granted. (1) Thus, it is understood that the power granted to confessors was not only to absolve from censures, but also from certain crimes, sins, and excesses, which would otherwise be reserved. Therefore, it is not surprising that the Sacred Penitentiary, when questioned, provided norms to the Bishops for each case. (1) *Acta S. Sedis*, Vol. I, p. 504. Our readers should also note that the declarations cited from the Sacred Penitentiary are prior to the promulgation of the Apostolic Constitution of the Holy See; therefore, the tenor and force of this Constitution should not be determined by the previous declarations of the Sacred Penitentiary, but rather the contrary. Nor does it contradict the fact that they were confirmed both in the Decree issued on February 26, 1879, and in another issued on March 25, 1881, in which, under number VII, it is stated: "In this Jubilee, without any exception, the resolutions of doubts issued by the Sacred Penitentiary for the Ordinaries of Italy on June 1, 1869, shall also apply." Indeed, such confirmations cannot change the meaning of the original decree, as it is stated therein. It may have seemed to the Bishops that Pope Pius IX granted confessors the power to absolve, even with a relaxation of the burden, to which penitents were subject, as had been done by previous Roman Pontiffs. And for this reason, they turned to the Sacred Penitentiary to inquire under what conditions confessors could absolve certain penitents, either without or without imposing a censure. III. However, for the imposition of the Tridentine excommunication, presumption is required. This, as We have said more than once, implies both knowledge of the law and the penalty attached to it. Therefore, if someone is ignorant—

[*Latin ed. p. 711*]

3. Those who retain goods, concerning which matters are discussed in the Tridentine Decrees, are either ecclesiastical, or pertain to other pious institutions which are there expressed; or if they are ignorant that certain actions are prohibited under excommunication, they do not incur this excommunication. Hence, any ignorance excuses them. It remains to state various decrees which have been promulgated by the Sacred Roman Congregations in this matter. Furthermore, there were issued by the Holy Penitentiary of Rome on June 1, 1869, concerning the faculties granted to confessors by Pope Pius IX on April 11 of the same year. These declarations, as we have said, precede the promulgation of the Apostolic Constitution,

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which was issued on the fourth day before the Ides of October of that same year; nevertheless, since they ought to provide a rule for confessors in this matter, we refer to them.

4. Therefore, many Bishops have inquired. IV. Whether and how those who have acquired and possess ecclesiastical immovable goods alienated by the Government can be absolved? R. The Penitentiary declares that those who hold such goods must, before delivering them to the Ordinary of the place, or to ecclesiastical officials, and having obtained from him, or from the Ordinary himself, a written opinion, signed before witnesses, which must be sent to the Ordinary as soon as possible, and kept in the Diocesan archives, or elsewhere, where it can be safely kept, declare, under the following conditions or obligations, to their heirs and successors, and to all those who may come after them: 1° That they retain the same goods in obedience to the will of the Church, and will submit to its commands. 2° That they will preserve the useful purpose of these goods. 3° That they will fulfill the pious obligations attached to these goods. 4° That they will contribute from the fruits of these goods to persons or places to which, by law, they rightfully belong. 5° That they will warn their heirs and successors, by means of the written opinion, of these obligations, so that they may know and be bound by them. V. Can those who have acquired ecclesiastical immovable goods, and who afterwards sold them to others, and cooperated in the sale of the same goods, be absolved, and under what conditions? R. Affirmative, provided that they have, with the favor of the Ordinary, and with due prudence, through designated men of the Diocese, made a deposit of the unjustly acquired profit, as Pignatelli states in Volume VIII, Consult. XI, n. 9. Moreover, it must not be unknown that the fruits usurped are ecclesiastical. For formal sacrilege, consisting in the usurpation of an ecclesiastical thing, cannot be present if it is unknown that the thing is ecclesiastical.

(2) The complete declarations are found in the Acts of the Holy See, Volume Y, page 28.

[*Latin ed. p. 712*]

328. What penalties are to be imposed, after the scandal has been repaired, on the new purchasers, and on others involved, so that they may, according to the dictates of their own conscience, and with the obligation imposed upon them by the Most Holy See to fulfill certain mandates?

R. Affirmative. They shall be imposed with some alms, in favor of the pious people of the place to which the said goods belonged, so that they may purchase them at a price that is judged to be less just by the Ordinary or Confessor. But if the matter concerns things which are not consumed by use, or which can be preserved by being kept, or concerning vestments and sacred vessels, the penitents shall be obligated first to appeal to the Ordinary of the place, so that he may provide for these matters according

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to the Indult already granted to him by the Holy Penitentiary.

VII. Can those who have acquired ecclesiastical goods, either by lease or by alienation from the Government, be absolved, and how?

R. Affirmative. The penitents shall be obligated first to appeal to the Ordinary of the place, so that he may provide for the goods that have been leased, according to the Indult already granted to him by the Holy Penitentiary.

VIII. Can those who have received ecclesiastical goods from the Government under an emphyteusis be absolved, and how?

R. Such penitents are not to be absolved unless they first present to the Ordinary of the place, or to other ecclesiastical persons, as mentioned above in question 4, by the Ordinary designated, a signed document in which they declare that they and their heirs and successors are subject to the following obligations or conditions:

1. To preserve the same goods, and to carry on a useful activity with them.

2. Not to make use of any privilege, or law, whether existing or to be enacted, concerning the exemption from canonical dues.

3. To retain the said goods at the will of the Church, and to be subject to its mandates concerning the restitution of the same goods.

4. To fulfill the pious obligations that are attached to the same goods, to the extent that they are not fulfilled from elsewhere.

5. To pay the annual canon, and to increase it for the expenses of justice, and according to the estimation of experts, if the sum stipulated in the contract appears to be too small, according to the dictates of a prudent conscience.

6. To warn their heirs and successors of these obligations by means of the signed document, so that they too may know by what they are bound.

IX. Can those who not only received ecclesiastical goods from the Government under an emphyteusis, but also redeemed them, be absolved, and how?

R. Provision must be made for such penitents as stated in the previous answer to question 4.

[*Latin ed. p. 713*]

329 X. And can those be absolved who have redeemed tithes and ecclesiastical rights, which by their nature are redeemable? R. Affirmative, provided that they first pay to the Ordinary whatever amount remains due of the principal sum to the Government, in order to maintain the favor of the pious institutions to which the redeemed tithes or rights pertain. 40. And can those be absolved who have redeemed canons, dues, services, or other ecclesiastical rights, which by their nature are not redeemable? R.

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They can be absolved, provided that they first, as stated in the response to question number 4, sign a document in which they declare themselves and their successors to be subject to the following obligations and conditions: 1. To retain the funds thus freed from encumbrances, for the benefit of the Church, and to obey its commands. 2. To preserve these same funds, and to carry on a useful activity with them. 3. To provide indemnification at any time to the pious institutions for the full collection of the canon, dues, and services, and for any other rights pertaining to those same pious institutions; and also to fulfill, as is due, the pious obligations attached to the funds, provided that they are not fulfilled from elsewhere. 4. To warn their heirs and successors by a signed document of these obligations, so that they too may know to what they are bound. (1) Warning to readers. P. 317, Col. 1. We have written that the actions prohibited in the Council of Trent are committed by Bishops and Cardinals (1). Experience has taught us that very few of the purchasers of ecclesiastical property are willing to subject themselves to such conditions, while most, indeed almost all, reject them. Furthermore, even when parents are in danger of death, they have sometimes been prevented by their children and relatives from issuing the declaration required by the Holy Penitentiary. Indeed, we know of cases in which sons and heirs have threatened the priest or pastor who suggested the declaration to the dying man, and thereby withheld absolution. Finally, many who hoped to become rich through the purchase of ecclesiastical property have burdened themselves with borrowed money; let them consider that, whether in health or near death, they will leave their children and family in great misery if they issue the required declaration, or that they will not be able to fulfill the imposed obligations, which sometimes is true. Therefore, confessors who are called to such dying persons should proceed with all seriousness and diligence, seek advice from prudent men, especially from the Bishop if possible, and then act accordingly. If, however, prudent advisors are lacking from whom to seek advice, and the Church is absent, or death is imminent, let them not forget that the soul, if it does not remember, will perish eternally. If, on the other hand, healthy penitents come to the confessor, let him hear and consider everything, and then present the case to the Holy See, and ask for what he believes will be most beneficial to the penitent in the Lord.

[*Latin ed. p. 714*]

330 and to Abbots, and afterwards, let them beware lest they be subjected to royal or imperial authority, etc.; readers should note that Abbots and others of rank, not only laymen, but also certain clerics, are granted jurisdiction over determined territories; indeed, the territory exercised by Superiors Regular is related to the benefit they hold; and this benefit, which includes all that is attached to it, incurs excommunication, both against laymen and clerics, if those goods are either usurped or converted to private use, etc.

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For when the Council speaks only of clerics and laymen, the meaning is: If any cleric or layman, of whatever rank, is subjected to the authority of clerics, even though here also others are included, as we have observed, who are constituted in royal or imperial authority. This we confirm again, as Pignatelli writes in the aforementioned passage, no. 3: "It is true that in the aforementioned decree of the Council, only clerics and laymen are included; for it speaks only of clerics and laymen. But the Regular are not included in the odious [subjection], and when it is a question of censures, they do not come under the jurisdiction of clerics." Thus also other most learned authors, whom Pignatelli especially cites.

Furthermore, on page 311, column 1, we wrote: "For a better understanding of this, it should be noted that rank is attributed only to laymen, not to clerics. Therefore, when laymen, especially inferior clerics, are mentioned under the name of clerics, it is also to be understood that the Fathers of Trent spoke of these."

Now, if we have considered the words of the Council more carefully, we have rightly perceived their meaning. For in the words: If any cleric, or layman, of whatever rank, is subjected to the authority of clerics, are only those constituted in rank indicated, excluding inferior clerics, namely, those who have no rank? We do not pronounce a judgment. However, the following should be considered by our readers. The arguments of the learned commentator Reatini, which he himself admits he extracted from the most excellent Cardinal De Luca, are as follows: "We are admonished, by this, that..."

[*Latin ed. p. 715*]

331. It is decreed, not concerning any and every occupation, but concerning those that are authoritative and of consequence (De Luca, *Ad Trid.*, p.t., Disp. 23). This is abundantly and manifestly clear, both from the persons to whom this decree specifically applies, and from the most serious words with which this offense is condemned; and also from the most severe penalties by which it is restrained.

2. The Fathers of Trent excommunicate clerics mentioned at the beginning of the chapter, even if they perform prohibited actions through supposed persons, whether clerics or laymen. But in order that someone might assume the identity of another in a matter so grave, and subject to such a grievous penalty, he must certainly possess some considerable authority; for here we are not dealing with the assumption of the identity of a non-existent person, for that would be powerless, and the fraud would immediately be revealed, but rather with the assumption of the identity of an existing person, who, acting either under another's authority or in his own name, performs the prohibited actions. But who of the lower clergy would undertake such a risk, unless he knew himself to be protected by an authority, by which he might be defended and kept unharmed?

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3. Could clerics of a lower order, without any ecclesiastical authority or dignity, themselves admit to actions that are to be avoided? For there are actions which would immediately be punished by the prelates of the Church; there are actions for which lawsuits are immediately instituted by the injured party, or appeals are made to higher ecclesiastical authorities; and finally, there are actions which (speaking generally) cannot be admitted by private individuals, so that it would be impossible for a lower cleric to bring them to completion. Therefore, the meaning of the chapter of Trent requires that the preceding words be understood solely of clerics or laymen who are established in some dignity, who do not fear human judgment, either because other clerics are subject to them, and who, consequently, dare not rise up against their superior out of fear; or because they possess civil authority and power; for which reason they either despise judgments, or do not allow any proceedings to be brought against them; or because, if the matter concerns a benefit, the revenues of which should belong to the cleric established in dignity, no one would dare to bring accusations.

4. Furthermore, the chapter extends up to the words: "A cleric, however, who, through nefarious fraud, etc." and always refers to the same persons; for which reason, those to whom the goods are transferred in any way, even through a supposed donation, are, as it appears from the context, themselves clerics or laymen of some dignity. In this place, we note that the Fathers of Trent do not seem to have included under the adverb "in any way" the title of purchase; but rather any gratuitous title, e.g., a legacy, an inheritance, a donation; if, indeed, the title of purchase were meant, it would have been necessary to express it with a stronger and more burdensome term than that of donation.

[*Latin ed. p. 716*]

332. 5° Moreover, it is prohibited that this donation be made by a person who is substituted, even from a donation made to a substituted person. But who prohibits us from affirming that this substituted person is one of those, or indeed is that very one, by whom clerics or laity are constituted in dignity, in order to use ecclesiastical goods, or to convert them to their own use? But another matter is this: it will always be true that the title of purchase has been more valid, and therefore it must be preferred over another.

6° From the context, it is also clear that the patron of the Church is one of the clerics or laity constituted in dignity; for the Fathers of Trent always, up to the words noted, speak of the same persons, as will be evident to the reader at the beginning of this chapter.

7° Hence, it follows that the beginning of this chapter should be applied to the lower clergy, if we extend the words "if any cleric, etc." also to the lower clergy; but how this can be done, is hindered by what we have noted above, and elsewhere, in expounding this chapter.

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8° We also acknowledge that, with such an interpretation admitted, purchasers of ecclesiastical goods would hardly be included even under such a Tridentine chapter, contrary to what has been asserted both by Pope Pius and by the Supreme Sacred Congregation in the places cited above. However, obedience must be given to established decrees. So what shall we say? We will frankly admit that it is so entangled, and also in relation to the established declarations, that it seems to us that this Tridentine chapter has been interpreted in such a way that we must defer to the judgment of the doctors. For if we extend the words: "If any cleric," also to the lower clergy without any dignity, the very words, actions, and other things that we have noted, seem to prohibit it; if we restrict those words to persons constituted in dignity, then private individuals are excluded from this chapter; and therefore, purchasers of ecclesiastical goods would not be included under this chapter. But to affirm this is forbidden by established decrees.

[*Latin ed. p. 717*]

33a. COMMENTS, PART SIX: ON SUSPENSIONS IMPOSED BY THE ROMAN PONTIFF, AS SET FORTH IN THE CONSTITUTION OF THE APOSTOLIC SEE. APPENDIX X L. On suspension in general. Suspension is an ecclesiastical censure by which a cleric is prohibited from exercising certain ecclesiastical acts that are otherwise his due. And it is either a sentence already pronounced, or one that is to be pronounced; the former is that which is inflicted by the law itself upon the deliquent, the latter is that which is first imposed by the sentence of a judge or superior for a crime. And both are either imposed *ex officio*, or *a beneficio*, or *ex officio* and *a beneficio* simultaneously. A suspension *ex officio* is one by which a cleric is prohibited from the exercise of his orders, or of other functions that are his due by reason of his order; for example, the celebration of the Mass, the administration of the Sacraments, etc. A suspension *a beneficio* is one by which a cleric is prohibited from receiving the fruits of his ecclesiastical benefice. A suspension *ex officio* and *a beneficio* simultaneously is one by which the cleric is prohibited from both the rights of office and the rights of benefice. A suspension, whether *ex officio* or *a beneficio*, is divided into total and partial. A total suspension is one by which the cleric is entirely suspended from all ecclesiastical office, or entirely from the receipt of all the fruits of his benefice. A partial suspension *ex officio* is one by which the cleric is prohibited from only some of the acts of his office; thus, when a priest is suspended only from hearing confessions, or a bishop from performing Pontifical functions, or from conferring orders. In these cases, he can perform all other acts that are his due by reason of his order. Thus, a priest who is suspended from hearing confessions can celebrate Mass and administer the other Sacraments. A bishop who is suspended from conferring orders can perform Pontifical functions and other acts of

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ministry.

[*Latin ed. p. 718*]

334. Of his own duties. But if he is suspended from ecclesiastical functions, he is also understood to be suspended from the acts of the episcopal order which cannot be exercised without the pontifical insignia, such as the mitre, the pastoral staff, and the pallium. Therefore, a bishop suspended from ecclesiastical functions cannot confer the Sacrament of Confirmation, nor perform sacred ordinations, nor consecrate altars and churches, because in these ministrations, pontifical insignia must be used. However, he can celebrate Mass as do other simple priests, hear confessions, baptize, and exercise acts of jurisdiction; for these acts do not pertain to ecclesiastical functions. A partial suspension from a benefice is when a cleric is suspended from only a portion of the fruits of his benefice, for example, one-third or one-quarter. Moreover, one suspension does not include another. Consequently, a cleric suspended definitively from office is not also understood to be suspended from his benefice, and vice versa. However, if the suspension is imposed absolutely and without any limitation, and it cannot be inferred from the circumstances whether it is from office or from the benefice, it is considered to be total, because an indefinite proposition is equivalent to a universal one; because no reason appears why it should be considered one way or the other; because when those who pronounce sentences usually define them, if they have not defined them, they are to be understood to have indicated a total suspension; finally, because an absolutely imposed suspension implies a cause of the most serious kind, which deserves the most severe punishment. Therefore, the extent or effect of the suspension depends on the will of the superior, so that it is within his power to limit it to lesser effects. For this reason, the words with which the decree of suspension is conceived must be carefully considered, and they must not be extended beyond what they mean. However, it must be noted that a suspension can be considered either as a censure, or as a punitive penalty for a crime committed by an ecclesiastic, or for a sin tolerated. Indeed, if a suspension is incurred as a censure, irregularity is incurred; but if it is imposed as a penalty, no irregularity is incurred, even if the disobedient gravely sin. To the extent that it is a censure, it cannot be lawfully imposed without a warning, without a written decree, and with other formalities required by law; unless the suspension is imposed by law, in which case no warning is required, as Reiffenstuel states in *lib. V Decretal. Tit. 39, De sent. excom. n. 21*: "To incur a censure by law, or by a general sentence for future offenses, or when, by law, or by sentence, or by a general decree, something is prohibited under a censure, no warning

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is required to incur it."

[*Latin ed. p. 719*]

335. "Admonitio: Quia ius est cura publica, ipsummet continuo monet, 'ubi ab aliquo sub censura prohibetur, nisi forsan admonitio praecedere ius ipsum expressĕ vult.' Pariter, nulla prae requiritur admonitio si suspensio lata fuerit in poenam admissi criminis; hoc enim in casu, finis admonitionis inutilis est. Dum vero suspensio fertur ab homine ut censura requiritur praevia admonitio, seu illius comminatio; quae ordinario debet esse trina cum competenti dierum intervallo; vel saltem debet esse una tribus aequivalens, id est tres monitiones complectens, cum trino et competenti intervallo; quod in lata monitione exprimendum est. Admonitio haec ut sit legitima, debet fieri in scriptis, coram testibus tradenda, ipsique personae suspendendae legenda; ut constat ex Cap. Sacro 24 h. t. Personis praesentibus idoneis, per quas, si necesse fuerit, possit probari admonitio. Nisi tamen persona aut se abscondat, aut declinet, aut fugiat; hoc enim in casu, satis est si suspensionis admonitio ad eius domum, vel ad Ecclesiae valvas, vel in alio publico loco affigatur. Admonitio insuper haec necessario suspensioni ut censura ferendae praemitti debet, iuxta probatissimos auctores, cum in iure praecipiatur censuris praemittendam esse monitionem canonicam. Ad cognoscendum quando suspensio lata est ut censura, vel ut poena vindicativa, haec suppetunt indicia. Suspensiones omnes latae a iure uti censurae spectandae sunt, nisi aliud constet. In iis vero quae ab homine sunt, ut censurae considerari possint, debent in scriptis fieri; quare spectari non potest uti censura suspensio ab Superiore verbo tenus prolato; ex. gr. 'te suspendo.' Cum enim in iure ad inferendam suspensionis censuram monitio prae requiritur, supponi non debet superior contra ius graviter delinquere velle. Pariter uti poena vindicativa spectari debet suspensio illata ob crimen Clerici consummatum, quodque tractum successivum non habeat, ex. gr. si mulierem quam domi detinebat ante suspensionis decretum expulerit, cum eaque de cetero non conversetur; cum enim finis censurae sit ut sit poena medicinalis, hoc in casu medicina esse non potest. Insuper si suspensio in perpetuum lata sit; etenim censurae ultra contumaciam non extenduntur; qua de causa suspensio perpetua quae secum infert perpetuam inhabilitatem, ex. gr. ad confessiones excipiendas, est uti poena vindicativa consideranda. Quod pariter dicendum est de eo qui innocens est de crimine, cuius causa suspensa aliqua ecclesiastica communitas fuit; cum enim..."

[*Latin ed. p. 720*]

336. Without sin, censure is not incurred; however, the suspension of an innocent person is to be considered a punishment. Finally, a suspension may be limited in duration, for example, to three months, or to a year, etc.; whereas, a censure of suspension, that is, without a limitation of time, is

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usually imposed. Besides these suspensions, there is another type, which is imposed "ex informata conscientia," by a superior, without revealing the cause of the suspension, but for reasons known to him, and without prior warning; and this is to be considered as a vindictive punishment. This power to suspend "ex informata conscientia" was granted to Bishops by the Council of Trent, Session XXIV, Chapter 1, concerning reforms, with these words: "Since it is more honorable and safer for the subject to obey the due obedience to his superiors in the inferior ministry, than to seek a higher dignity with a grave scandal to the superiors, he to whom access to the sacred orders has been denied by his Prelate, for whatever reason, even for a hidden crime, in any way, even extrajudicially, or who has been suspended from his orders or degrees, or ecclesiastical dignities, shall not, against the will of his Prelate, be promoted, nor restored to his former orders, degrees, dignities, or honors, with any license given to him." Concerning the questions that are raised regarding this type of suspension, see the Canonists. We refer to the letter written by Lucio Ferraris in this volume, number 25, which was sent by the Congregation of the Holy Council to the Nuncio in Venice, so that both the Ordinaries and their subjects may know what to do in such a matter. "Indeed, experience has shown that those accused of crimes often simulate illness and make false reports and complaints in order to avoid punishments and the corrections of bishops. Therefore, in the future, Your Eminence will absolutely reject such appeals, and will not allow any prohibition to be relaxed by virtue of the appeal. But since ecclesiastical discipline and style require that the superior judge, although he cannot properly receive appeals from those who have been suspended extrajudicially and "ex informata conscientia" by their Ordinary, should not deny access to recourse, so that, with due regard for the jurisdiction of the bishop and the rigor of discipline, no bishop may abuse his power over his ecclesiastical subjects; after these things, Your Eminence and your successors shall only be allowed to hear such appeals, provided that the following conditions and precautions are observed. First of all, they will not easily be granted access, but with due consideration and examination, and in no other case than when there is a strong suspicion..."

[*Latin ed. p. 721*]

337. That the Ordinary, by his authority, may abuse his power, namely, by proceeding in the aforementioned manner to impose the penalty of suspension without a grave cause, contrary to the prescriptions of the sacred canons, and to the detriment of his own soul. Secondly, even with an appeal made, those who are suspended shall remain in the state in which they were; and while this is pending, the orders from whom they were suspended shall not, in any way, be able to exercise their office. Thirdly, when an appeal is admitted, it shall be required by letters from the same suspended party that the Ordinary disclose the causes for the imposed

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suspension, with the added promise that he will not be burdened with keeping secret that which justice demands, or Christian charity suggests. By these means, abuse of power on the part of Superiors, and disobedience on the part of subordinates, may be avoided.

APPENDIX XLII.

WIDE SUSPENSIONS RESERVED TO THE SUPREME PONTIFF.

Concerning the wide suspension imposed in Chapters and Convents of Churches and Monasteries which admit Bishops or Prelates, before they present the apostolic letters. Such a suspension is thus decreed by Pope Pius IX:

"Those who incur the suspension by their own action shall be deprived of the benefits of their offices at the discretion of the Holy See, namely, Chapters and Convents of Churches and Monasteries, and all others who are responsible for the governance and administration of such Churches or Monasteries, concerning Bishops or other Prelates provisionally appointed to said Churches or Monasteries by the same Holy See, unless they present the aforementioned apostolic letters of their promotion. Furthermore, Pope Pius IX wished, by this wide suspension, to preserve the full and unimpaired rights of the Roman Pontiff, to caution against anyone unlawfully undertaking ecclesiastical duties, and to provide those subject to him with a certain indication by which they may distinguish true and legitimate pastors from false and illegitimate ones. However, it must be understood that this law is not the same as that which the same Pope Pius IX enacted in the Constitution *Romanus Pontifex* on August 28, 1872, of which we briefly spoke in our commentaries, Volume 1, page 413. For in that document, there is mention of a special excommunication reserved to the Holy See, imposed on Canons and Dignitaries of vacant Cathedral Churches, who dare to grant the administration of the Church to someone elected or presented by secular authority under any pretext; and on those elected or presented who presume to engage further in such administration. But in our chapter, we are speaking of a suspension..."

[*Latin ed. p. 722*]

338. A broad dispensation is granted in the Chapters and Convents, which concern the governance of churches and monasteries, to those who are appointed by the Apostolic See itself, before they present the apostolic letters concerning their promotion. This is not the same case. Furthermore, the deprivation of the fruits of ecclesiastical benefices of any kind, and of other ecclesiastical revenues respectively obtained by them, for which the Roman Pontiff prescribes a penalty, is not a suspension properly so called, which would be a censure; and we believe this is

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evident from the fact that such deprivations are also joined with a greater excommunication, specifically reserved to the Holy See. For this reason, the present suspension is recognized as having nothing in common with that. This suspension originated from the Extravagant *Junctae Nobis Be Electione*, Chapter 1, among the common decrees, where Boniface VIII, among other things, decreed the following: "We hereby decree, by this Constitution, that Bishops and other superiors, as well as Abbots, Priors, and others exercising the governance of monasteries, by whatever name they may be called, who are promoted, or receive the office of confirmation, consecration, or benediction, at the aforementioned (Apostolic) See, shall not presume to receive, or administer, the goods of the churches and monasteries assigned to them without the letters of that See, which contain the details of their promotion, confirmation, consecration, or benediction; and no one shall receive them, or obey them, or attend to them, without the presentation of such letters. And if, perhaps, it should happen that those aforementioned, namely Bishops, superiors, Abbots, Priors, and others exercising the governance of monasteries, have acted in this way in the meantime, let it be considered as unlawful; and in the meantime, neither those Bishops, nor superiors, Abbots, Priors, nor those exercising the governance, shall receive anything from the revenues of the churches or monasteries. The Chapters and Convents of the churches and monasteries themselves, and others, who receive those appointed without such letters from the aforementioned See, or who obey them, shall be suspended from the reception of the fruits of their benefices, until they have obtained the grace of the same See concerning this matter. Similarly, Bishops, superiors, Abbots, Priors, and others exercising the governance of monasteries, as mentioned above, shall not be excused from the usual oath of fidelity and obedience. Furthermore, those Pontiffs who may receive the pallium at the aforementioned See without letters of tradition of that pallium, shall in no way depart from it; those who do depart (until such an oath has been given, and the letters obtained) shall receive nothing from the revenues of the churches and monasteries.

[*Latin ed. p. 723*]

"Let them understand that whatever is done within their jurisdiction, as is said of others, shall not be valid by their own authority, but by the authority of the Holy See."

As everyone can see, in this matter, both Bishops and Abbots, and other prelates appointed by the Holy See, are prohibited under penalty of suspension from assuming the administration of places, dignities, and offices without apostolic letters granting them the authority to do so; and Chapters and Convocations of churches and monasteries are prohibited from receiving them and rendering them due obedience before the customary presentation of the apostolic letters, under penalty of suspension from the

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enjoyment of their benefices if they have transgressed the law.

However, the suspension applied to Bishops, Abbots, and other prelates who, in any way, dare to assume the administration of dignities and offices granted to them by the Holy See is not found in the Constitution *Apostolicae Sedis* renewed, nor in the Constitution *Romanus Pontifex*, as it might seem; although in this Constitution, after stating that those who receive canons and dignities before the presentation of apostolic letters incur the penalties of excommunication *majoris*, and deprivation of the fruits of ecclesiastical benefices, and other ecclesiastical revenues, and have decreed these penalties, it adds: "These same penalties are likewise incurred by those who are named and presented to vacant churches, who dare to assume the care, governance, and administration thereof by concession and translation from dignities and canons, and other offices, after having been appointed by them,"; however, in this passage, we are not speaking of Bishops, Abbots, and prelates appointed by the Holy See, but of those who are named and presented by secular and lay authorities, who dare to assume the administration of offices and dignities under the title of commissary or general vicar, without the Holy See having previously been informed of the matter, as will be clear to the reader of the Constitution.

Since, therefore, the case presented in the Constitution *Romanus Pontifex* is different from the case with which we are now dealing, it should not be confused with it, especially since the suspension is also different, and the cited Constitution is subsequent to the Constitution *Apostolicae Sedis*.

However, the suspension imposed on Chapters and Convocations of churches and monasteries who dare to receive Bishops or other prelates in any way appointed by the Holy See, that is, either by nomination or by confirmation or benediction, before the presentation of apostolic letters, remains in full force, both in its extension and in its reservation; and therefore, we must now consider it.

But first, let us examine the question:

[*Latin ed. p. 724*]

340. The Commentators inquire: whether in this case the Bishop is to be understood as having received the consecration, or whether it suffices that he is elected or confirmed, even though he has not yet received the episcopal consecration. Indeed, the learned Reatinus writes in this passage (Commentary, n. 178, Edition of 1880) *• Furthermore, we ought to consider Bishops as consecrated: this opinion is followed by Conrad in his Memoriale de censuris, page 103. The Most Reverend Pius expounds the opinion of others in his Commentary on the Constitution, page 292, before pronouncing his own. Perhaps these have been influenced by the authority of the most excellent Suarez, who, following the rule of interpretation of the odious or penal law, affirmed that, strictly speaking, a Bishop is con-

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secrated by his name, De Censuris, disp. XXI, Sect. II, n. 69. However, the learned writers of the Nouvelle Revue Théologique, Volume XVII, page 172, reject Suarez's interpretation, and rather favor the opinion of Lucius Ferraris, who in his Bibliotheca, Voc. Episcopus, Art. H, n. 38, makes the following distinction: "By the appellation of Bishop" is understood only the one who has received consecration with regard to the exercise and dignity of the episcopal order. But with regard to the episcopal jurisdiction, both the elected, the confirmed, or the provisionally appointed are included, because these also pertain to the elected and confirmed... therefore, the disposition speaking of the Bishop is also understood to apply to the elected, confirmed, or provisionally appointed, even if not consecrated, as noted in the Glossa in Clement I, Verb. Episcopi... and Fagnanus with others there, citing themselves. Since, therefore, the episcopal power is required only by the Canonists for those things that pertain to the episcopal order, and not for those things that pertain to jurisdiction; and since Pope Pius IX has imposed suspensions on those who were to be Bishops and Prelates for the governance and administration, it seems that the law is to be understood to apply to the Bishop even if he is not consecrated. Furthermore, this question is of the greatest importance. For if the law is about the consecrated Bishop, those who receive a non-consecrated one do not incur suspension; otherwise, if the law is to be understood to apply to the non-consecrated as well. Therefore, in order to say something, we willingly admit, along with Reatinus and others, that in penal laws, a more lenient interpretation should be made, and that their interpretations should be softened rather than aggravated; but this occurs in doubtful law, when it is not apparent in what sense, whether strictly or broadly, the word of the law should be taken. But in our question, there does not seem to be such a doubt. For the Legislator, when speaking of Bishops and Prelates: "within the same Holy See, in any way provisionally appointed," seems to indicate any and all modes of provision by which men...

[*Latin ed. p. 725*]

341. Ecclesiastical dignities are provided by the Holy See. Therefore, as Boniface VIII states, they either receive the office of confirmation, or of blessing, or of consecration. However, it is certain that, in kingdoms where kings or prelates have the power to present or nominate candidates, the Roman Pontiff confirms the election, if nothing obstructs; and through this confirmation, the process proceeds to consecration or blessing, with the necessary observances. But when these bishops are elected and presented, and if they reside in distant regions, especially outside of Europe, they do not always travel to Rome to receive their episcopal consecration, but rather receive it from their own Metropolitan, or from another bishop, after their election has been appointed by the Holy See; and furthermore, it cannot be denied that a bishop who has been elected and confirmed has jurisdiction

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in the diocese assigned to him. (1) Therefore, he can certainly administer the affairs of his diocese before his consecration. It is therefore not necessary for a bishop to be consecrated. This is more clearly evident from the Council of Trent, Session VII, Chapter IX, and Session XXIII, Chapter 2, where the following is stated concerning the consecration of bishops: "To those who are appointed to the charge of Cathedrals, or superior churches, by whatever name or title, even if they are Cardinals of the Holy Roman Church, if they do not accept the office of consecration within three months, they are obliged to restore the fruits of their office; and if they neglect to do so within the same three months, they are, by law, deprived of the churches." Therefore, since bishops who have not yet been consecrated receive the fruits of the episcopate, they can certainly administer the affairs of the diocese; and therefore, it is not necessary for consecrated bishops to travel to the diocese assigned to them, and to undertake the administration thereof. If, therefore, any doubt could arise, either that a bishop cannot, by law, take over the administration of the diocese before consecration, or that in the Plan of Capite, bishops are to be understood as consecrated. But we have already demonstrated the first to be false; and we do not know how the second can be defended; for it is stated: 1. "Those who are appointed to the government and administration..." (1) As is evident from what Ferraris writes in the aforementioned place, and number 32, namely: "Before taking possession, a bishop cannot exercise those things which pertain to his order, but only those which pertain to his jurisdiction" - and more clearly in number 36: "A bishop receives jurisdiction in confirmation, even before consecral; therefore, a confirmed bishop, although not yet consecrated, can excommunicate, suspend, interdict, visit, correct, punish, convene a synod, confer benefices, unite, annex, divide churches, absolve certain sins, and the like, etc."

[*Latin ed. p. 726*]

342. Bishops are received: however, the governance and administration do not require the consecration of a Bishop; 2. they are said to be provisionally appointed: therefore, whether by election or by confirmation, the consecration is not to be included immediately; 3. it is stated: that they must first present the Apostolic letters of their promotion. But promotion does not include consecration, as is clear from what Ferraris writes in the cited place, no. 42: "Those who are 'provisionally appointed' or 'promulgated' by the Pope in Consistory are called 'promoted,' even if they have not yet been consecrated." The decree 1 de Election, among the common decrees, states: "Those who are promoted at the aforementioned Holy See." And the Council of Trent, Session 7, Chapter 9, states: "To the larger churches, those who are promoted shall undertake the office of consecration within the time prescribed by law." Therefore, since it does not appear in any way from Piano Capite that Bishops are to be consecrated, it also appears

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from Berardi's Commentary on Canon Law that those who receive a Bishop who has not yet been consecrated to the governance and administration of the Church entrusted to him are to be excused from this obligation. This, finally, is evident from the facts. For a Bishop who has not yet been consecrated can exercise the governance and administration of the Church entrusted to him, except for those things that pertain to the episcopal order; therefore, those who are subject to him are bound to render obedience and submission, and they do so: if, therefore, they render it before he presents the Apostolic letters of his promotion, giving assurance of his office, they transgress the law, and consequently incur a serious suspension. And this applies to Bishops. However, prelates are properly called those who have obtained jurisdiction, as if episcopal, and in the external forum, whatever the cause for obtaining that jurisdiction may be (1). Eccl. univers. Dissert. V, Cap. 3°, states: "Four kinds of prelates are demonstrated. The first kind are the superiors of regular, or monastic, orders. The second kind are the superiors of secular institutions, or Abbots, or Deans, who are called in collegiate churches, exercising certain kinds of jurisdiction under the Bishop. The third kind are those who reside in the diocese of Usküb, having a certain assigned territory like a diocese, within which they exercise ecclesiastical jurisdiction, even in the external forum. The fourth kind are those who exercise episcopal jurisdiction in a certain territory separated from the diocese of any Bishop, and are called by a singular and proper name, namely, 'of the diocese of no one.' Indeed, it does not contradict that some prelates can be referred to both the third and the fourth kind of prelates, because they exercise jurisdiction both in the diocese of a Bishop and in the territory of no one, that is, with due regard to the places, since it sometimes happens that certain places are subject to the governance of these prelates in the diocese of a Bishop, while other places are located outside the diocese of any Bishop. And in these cases, it is the case that the prelate of this kind, in that part of his administration that is located in the diocese of a Bishop, is considered as a prelate of the third kind, while in the other part, which is said to be the diocese of no one, is considered as a prelate of the fourth kind, or of no one.

[*Latin ed. p. 727*]

With these premises established, let us examine what such a suspension entails, who incurs it, and for what reason. And with regard to this last point, the fault that incurs suspension is the reception of bishops or other prelates into the governance and administration of churches and monasteries, who have not been provided for in any way by the Holy See, before they have presented their Apostolic letters of promotion. Therefore, 1. since in penal matters words must be understood in the strictest sense, those who receive such individuals will not be excommunicated if they receive not a bishop, or a prelate properly so-called, but one who is sent,

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for example, as a visitor or administrator of a diocese, church, or monastery, or who presents himself, before he presents his Apostolic letters. 2. Such reception must be understood in an ecclesiastical sense; consequently, it does not signify any reception whatsoever, for example, to receive a bishop or prelate as a guest, to offer him the services of hospitality, friendship, and reverence, but to receive them as bishops and prelates of that church, diocese, or monastery, and to promise and render them due obedience. This is evident not only from the purpose intended by the legislator, but also from the words "for the governance and administration of the church or monastery," by which episcopal and prelatic functions are indicated, but also from the law of Boniface VIII, which we cited above, in which it is expressly stated that those who are under suspension are those who receive or obey those who are under suspension. Therefore, if there are those who do not promise or render obedience to a bishop or prelate, although they treat them with due reverence, they will be exempt from the suspension. For since they have not exhibited that proper obedience and submission by which bishops and prelates are received, it is clear that the pontifical decrees have been observed by them, since it cannot be said that they have received bishops and prelates into the governance and administration of the church or monastery; and this reception is properly and truly made by rendering obedience to someone as one's proper and legitimate superior. But in order for such a fault to exist, these bishops and prelates must have been provided for in some way by the Holy See; that is, to use the words of Boniface VIII, they must be those who are promoted, or who receive the office of confirmation, consecration, or blessing, by that Holy See, for the churches and monasteries assigned to them, and they must not presume to approach that See without the letters of that See containing the promotion, confirmation, consecration, or blessing. From this condition, it follows that if an imposter approaches, presenting false letters, and the Chapters and Conclaves, not noticing the falsity of the letters, receive him,

[*Latin ed. p. 728*]

344 and that they should obey him, they should avoid this suspension. For these individuals are not stained by any fault, nor have they shown any disobedience to the pontifical decree; they are therefore not subject to the penalty for which this suspension is imposed. But what if the Bishop and Prelate have not been provided for by any agreement with the Holy See; yet he presents himself to the Church and Monastery as if he were provided, deceiving the Canons and Monks, and they render him the obedience due to them before he exhibits the apostolic letters? We have no doubt that they incur the suspension. Although it is stated in the law that Bishops and Prelates are provided for by the Holy See, nevertheless, the fault of those who receive him lies in the fact that they admitted him before presenting legitimate proof of his promotion in the form of the apostolic

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letters; therefore, they truly and properly sin against the established decree, and consequently, they incur the suspension. Furthermore, the purpose of the law is that a Bishop or Prelate who is not properly provided for should not be received; but as long as the purpose of the law remains, and it is understood within the very words of the law, the law itself remains in force, and consequently, the penalty for transgressing the law is also attached.

The suspension is incurred by: 1. Chapters and Convocations of Churches and Monasteries, who render obedience to Bishops or Prelates, in any way provided for by the Holy See, before they exhibit the apostolic letters as proof of their promotion. Therefore, the Canons, and all those who are part of the Chapter, and not others who are not part of the Chapter, provided they have not broken the established law; and all Religious, from whom the Monastery or Convocations are formed. However, it must be noted that when a suspension is imposed on the community, even the innocent incur it, not as a censure, which is not incurred without sin, but as a penalty.

But let us hear St. Alphonsus, Book VII, n. 317: "When a suspension is imposed only on the community, it does not affect individual persons in regard to their particular duties, but only in regard to the offices or benefices of the entire community..." And if anyone exercises functions of the community that are prohibited, they are not considered to incur an irregularity, because that prohibition is not properly a censure, but rather a prohibition for particular persons to hold such offices. If, however, the suspension is imposed on the community, and on individual persons within it, then it does not affect the innocent, but only the guilty; for no one can be excommunicated or suspended for the fault of another, as is commonly taught and is evident from Chapter 2... and more clearly from the Chapter on "Those Things That Are Done by the Majority," where it is said: "Since sins must be borne by their authors, let the penalty not be prolonged, until the delict is fully accounted for."

But this broad suspension is entirely...

[*Latin ed. p. 729*]

345. This pertains to the community, and not to individual persons, as is clear from the text presented to the reader; therefore, even the innocent are subject to it. However, 2. All those who receive bishops or other prelates for the governance of churches and monasteries are suspended, before, etc. These, however, are not understood to belong either to the Chapter or to the Convent. Therefore, there are other clerics, and other religious men (for the suspension is said to apply only to ecclesiastical persons) who, residing in the diocese or convent, are subject, although they do not belong to the Chapter or the Convent, and nevertheless owe obedience to the bishop or prelate in the usual manner. » They are not, however, subject to the sentence by » law itself. Unless there is an » explicit mention of

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bishops » in the matter. » Nor should anyone suppose that the chapter in question deals with a suspension from office, and the chapter in the Plan deals with a suspension from the enjoyment of fruits; for bishops are considered exempt from any suspension, unless it is expressly stated, as is clear from the Glossa in the passage cited. « I » did not formerly believe that » this constitution applied to the » penalties of suspensions from » benefits... but » today I do not doubt that even » in suspensions from benefits, » not only from office, from » entrance into the Church, or » similar matters, this constitution » applies. However, if any bishop, or anyone from the Chapter, or anyone outside of it, were to incur such a fault, they would not be bound by the suspension, because when it is a question of suspension, bishops are not understood to be bound unless there is an explicit mention of them. This is clear from the common opinion of the Doctors, based on Cap. Quia periculosum 4 De sententia excommunie, in 6, which reads as follows: « Because it is » dangerous for bishops and their » superiors, because of the execution » of the pontifical office, which » frequently requires them to, in » some case, incur the sentence of » interdict or suspension by the » very fact. We » with prudent deliberation have » decided that bishops and other » superiors should not, on any » occasion, incur the sentence » or mandate of the aforementioned. We do not, however, believe that bishops who evade this suspension incur excommunication or a latae sententiae suspension, as in the Constitution Romanus Pontifex, since that case is entirely different from the present one, as we noted above, nor can the penalties be extended from case to case, even though there is an identity of reason. Finally, it should be noted that since the suspension pertains to the community, with regard to Chapters and Convents it does not have the nature of a censure or a penalty, but merely of a deprivation and inability; therefore, if members of Chapters and monasteries violate the suspension, or do not observe it in any way, they do not incur an irregularity, although they sin grievously because of disobedience, as is clear from the testimony of St. Alphonsus cited above.

[*Latin ed. p. 730*]

346 Among the ancients, Bonacina, in *De censuris omnibus ecclesiasticis*, particularly in Disp. III, quaestio IV, punct. X, n. 4, affirms that Chapters and Convents are suspended not only from the common offices, but also from the benefices which individuals possess in particular. (1) Among the commentators on the Pian Constitution, Ciolli, in his *Commentaria*, page 128 (2), defends the same opinion. However, for those who are neither members of a Chapter nor of a Monastery, the censure, when directed at individuals, entails that, if they transgress, they incur an irregularity. III. It remains to be seen what such a censure entails. This is clear from the law, which states that such Chapters and Convents incur the suspension from the enjoyment of their benefices at the discretion of the Holy See.

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Therefore, it is not from their office, but only from the benefice itself. Nevertheless, among the commentators, two points are debated concerning this matter: the first is whether the law should be understood to apply to the common benefices of the Chapter and Convent, or also to the individual benefices held by particular persons; the second is, assuming that the law is to be understood to apply to common benefices, whether the administration of those benefices, daily distributions, and other related matters are included within the scope of the law. However, other commentators, following Suares and others of the ancients, believe that Chapters and Convents are suspended only from the enjoyment of the fruits of the benefices which they hold in common; and we consider this opinion to be more correct. Indeed, it is certain that in the cited passage, Chapters and Convents, and individual members of the Chapter and Convent, are not suspended, but rather the universal body is suspended, with no mention of individuals; and it is certain that Chapters and Convents are suspended from the enjoyment of their own benefices; therefore, from those benefices which the Chapter and (1) "Here," he says, "there may be doubt as to whether Chapters are suspended from benefices," which they hold "chapterwise or in common," or rather from benefices "which individuals obtain." Suarez, *Disputationes*, 31, sect. V, n. 23: "In this case, I believe it is more probable that they are suspended only from the enjoyment of their benefices." Boniface VIII, in the aforementioned *Extravagantia*, "does not suspend only the Chapter and Convent, but also 'individuals' of the Church," and as is gathered from the words: "and all Chapters and Convents which receive or obey [the decree] are suspended from the enjoyment of their benefices, until they are free from such [irregularity] by the order of the Holy See." (2) Indeed, it is clear that individual members also incur suspension from their particular benefices, when they culpably assent to such a decree, as is proven by those words of the law: "whosoever adheres to such a decree, all [are] suspended."

[*Latin ed. p. 731*]

347 The suspension applies to the collective body, and not to the individual members of the Chapter and Convent, nor to those things which each individual possesses within the Chapter and Convent, nor to those things which do not pertain to the Chapter and Convent. Indeed, the opinion of the most distinguished doctors is that, when a suspension is generally imposed upon a university, without any mention of individuals, the particular benefits which pertain to the university are not included in the suspension. This, besides St. Alphonsus in the aforementioned passage, is taught by Roncaglia in *Theologia universa*, Tractate IV, *De Censuris*, Question V, Chapter 1, Question VII: "The suspension *ferri pot*" applies not only to particular persons, but also to the Community. It should be noted that "when a suspension is simply imposed upon the community, it

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does not extend to individual distributive persons, but only deprives the community of the offices and benefits which are common to the College, Chapter, or Community; and each particular person retains the right to exercise the office and administer the benefit which belongs to them, as a particular person." Suarez, in *De Censuris*, Disputation XXVIII, Section III, affirms the same: "The Chapter, strictly speaking, does not signify the individual persons of the Chapter, but the university itself; therefore, the suspension of the Chapter only binds the community, as it is one body, because the force of those words does not only allow for this interpretation, but also demands it in every respect... Therefore, it is of this nature that the suspension and penalty are to be understood." Gibalini, in *De sacra iurisdictione in ferendis censuris*, Section IV, n. 4, writes the same: "When the Chapter, or the University, is simply and absolutely suspended, it is to be understood that the suspension falls upon the Chapter collectively, or as a certain single body, and not upon individual distributive persons, unless something else is gathered from the matter and circumstances, or it is declared in law or judgment... Because the names Chapter, College, Convent, and University, and other similar names, do not properly signify individual persons, but the community as a single body. However, there is no reason to misuse these words in the sentence of suspension, provided that the community and the Chapter are formally capable of suspension. Therefore, the proper meaning of these words must be retained, unless, as I said, something else is indicated by law or judgment." Finally, to omit others, De Alteriis, in *De Censuris ecclesiasticis*, Volume II, Disputation VII, Chapter V, page 115: "When a suspension is simply imposed upon the Chapter, it is understood that the Chapter itself is suspended, insofar as it is a certain whole, and not the individual persons of the Chapter, because..."

[*Latin ed. p. 732*]

348. This term, "College," or "Chapter," or "University," and its plural forms, do not signify individual members of the Chapter, College, or University, but rather the very body of the College, University, or Chapter. Therefore, the suspension of a Chapter, College, or University affects the entire community as a single body. Thus, the opinion of Boniface was rightly rejected by the older doctors. However, the principal commentators on the Apostolic Constitution, Reatinus, Patavinus, *La Nouvelle Revue Théologique*, De Varceno, and others, reject the same opinion, which has been revived by the esteemed Ciolli. Nor does the reasoning presented by Boniface, or that added to it, appear to be sound or true. For, those individuals, or all those of whom Boniface speaks, who are not members of the Chapter and Convent, and therefore do not possess common benefices, were suspended from their particular benefices. Furthermore, no one will be able to deny that the reasons adduced by the alleged authors are more solid than others. To these, if we add that penal law is involved, and there-

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fore must be strictly interpreted; and, granted, though not conceded, that there is doubt, in cases of doubt the minimum must be maintained, our opinion becomes certain and should be followed in practice. If opponents were to say that it is only probable, we would conclude that no one is subject to censure, when it is believed that a truly probable opinion does not incur censure. Nor shall we be moved by the circumstance that it might happen that the Chapter and Convent, in a case of wrongdoing, would incur no penalty if they did not possess common benefices. For, with regard to the Convent, all benefices are common, since those bound by the vow of poverty can possess nothing of their own; but with regard to Chapters, it is very rare that they do not possess common benefices; and laws are made for those things which frequently occur. But suppose such a case were to arise. Should we then be compelled to deviate from the rule of interpreting laws correctly? The legislator must be considered to have foreseen the case, or not. If he foresaw it, and did not legislate, he disregarded it. But if he did not foresee it, by what right do we extend the law to that which the legislator did not even consider? Furthermore, Alterius, in *De Censuris Ecclesiasticis*, Volume II, pages 76 and 77, resolves this question in the same sense. "Similarly," he says, "if he possesses no benefice when he is suspended, the suspension does not affect him, since it is limited to the benefices which he possesses at the time the law is violated." And this applies to the University; but it is certainly the case, by law, that all others who are neither members of the Chapter nor of the Convent incur suspension from the reception of benefices which they possess particularly.

[*Latin ed. p. 733*]

However, further inquiry is needed in this matter: whether, when Chapters and Congregations incur a suspension from the reception of their benefices, they are also removed from the administration of said benefices. Indeed, the Patavinus commentator, *Comment.*, page 315, n. 432, Del Vecchio, *Theol. mor.*, Vol. 1, page 732, n. 918, and others, hold that such a suspension also includes the administration of the benefice. For he writes: "A suspension from the reception of benefices is understood as a suspension from the reception of the fruits, and from the temporal administration; therefore, an administrator must be appointed for him." Another states: "The effect of this censure consists in the fact that the cleric who is beneficed is suspended from the reception of his benefices; that is, he is suspended from the benefits until he merits absolution and obtains it from the Holy See. But he who is suspended from a benefice, as Laym. *De susp.*, n. 3, states, is understood to be suspended only from the reception of the fruits and from the temporary administration of the benefice, therefore an administrator must be appointed for him; if he, however, intrudes into the administration forbidden to him, he is thereby, by law, deprived of it." From Cap. *Cupientes*, § *Caeterum, de Elect.*, in

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6. (1) However, Reatinus, *Comment.*, n. 179, Conrad, *Memoriale*, page 103, and others, hold that those who commit such a fault are suspended only from the reception of the fruits, but not from the administration of the benefices. (2) We believe the opinion of these latter to be true and to be held. For in penal matters, the law must be interpreted strictly; in the law, a single suspension is indicated from the reception of benefices, that is, from the reception of the fruits of the benefice; but it is within the power of the one imposing the suspension to limit it to more or fewer effects; therefore, since the legislator limits the present suspension to the reception of fruits, we cannot, nor must we, extend it to other penalties that may be attached to the suspension. The alleged Cap. *Cupientes* does not stand in the way; in it, it is a question of a suspension from all of one's benefices, and therefore the penalty imposed includes all attached effects. "But if those who are choosing, whether the elections themselves are held in concord or in discord, should fail to present the elected within eight days, after they can conveniently do so, those who are culpable in this matter, with regard to themselves, shall be, as far as they are concerned, excluded from the process, and shall be totally deprived of all benefices, their own, which are in that Church, for a continuous period of three years, beginning from that time, and we decree that they shall be suspended." To which, if they have intruded within that time, through their own temerity, or under some other pretext, they shall, by law, be perpetually deprived. (2) It is sufficient to quote the words of one, Reatinus: "Perceptione; but only from the fruits, and if I have an opinion, not from the administration."

[*Latin ed. p. 734*]

350 from total suspension from benefices; but in our case, the suspension is limited to the receipt of fruits; therefore, it is not to be extended to the administration. Having resolved this question, it remains to be seen: whether those ecclesiastical persons who are delinquent in this matter are to be suspended from daily distributions, and other uncertain revenues of the church, e.g., from rents. Regarding the latter, Alterius makes a distinction in the cited passage, page 76. "Aliae" (distributions) are in no way annexed to the benefice, which are uncertain, and are not always, but sometimes offered by the faithful at their own discretion, such as alms given for a Mass to be said, or for the Office for the dead, or similar things, and these properly do not fall under the category of ecclesiastical fruits, because they do not come from the benefice itself, but are given to the person by occasion of the benefice, which, of course, has the right to celebrate in this or that church. Therefore, if uncertain revenues, and if (1) Suarez, in De miles, holds the same opinion, they do not come from the fruits of the benefice, they are not to be considered as being suspended from such revenues. But with regard to daily distributions, many of the ancient doctors have defended the affirmative opinion. The reason, according to Alterius in the

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cited passage, is because "distributions are also given for the benefice, for although service and residence are required to obtain them, yet the title of the benefice is also necessary; therefore, if another were to perform the same service without the title of the benefice, he would gain nothing; therefore, when someone is universally suspended from the benefice, he also loses the distributions." Other canonists, considering that the Council of Trent, Session XXI, Chapter 3, on Reform, decreed that in churches where there were no daily distributions, or where they were so meager that they might be neglected, they should be increased from one-third of the fruits of any benefices, (2) have introduced a distinction, as stated in Censuris Disput. XXVIII, Section I, number 29. "The reason," they say, "is because even these distributions are given for the sake of the benefice; although they are immediately given for assistance or ministry to some divine office, this is not outside the reason for the benefice, which is given by its institution for the sake of the office; and furthermore, that office would not be a sufficient reason for obtaining distributions, unless it were performed by virtue of the benefice; therefore, those distributions are like a part of the benefice." (2) "In this chapter: Since benefices are established for the sake of divine worship and the performance of ecclesiastical duties, so that in no way may divine worship be diminished, but that all things may be subject to it; the Holy Synod decrees in cathedrals and collegiate churches, where there are no daily distributions, or where they are so meager that they might be neglected, one-third of the fruits..."

[*Latin ed. p. 735*]

Thus, it is affirmed that daily distributions are included under suspension if they are derived from the revenues of a benefice, because in this case, these are to be considered as fruits of the benefice; otherwise, if they are derived from some other particular endowment. "For," says Schmalz, in *Grueber Ius Eccl.*, Book V, Title 39, n. 302, "the words 'only for beneficiaries'" are to be understood not 'in respect of the benefice,' but 'as a stipend for the office'; and the benefice is merely a condition for the granting [of the stipend], not the cause of the concession." However, this view has been considered too rigid by other, both ancient and modern, Doctors; and they have maintained that any daily distributions derived from a benefice should be excluded, and therefore are not at all included under the present suspension. The reason for this seems evident, since daily distributions, under the name of fruits of the benefice, are in no way to be considered as such, since they are truly not given because of the benefice, but because of the diligence with which the Canons or beneficiaries attend the choir; and therefore, those who are negligent, while benefiting from the fruits of the benefice, lose the distributions. This is clear to all. Therefore, when a suspension is incurred due to the fruits of a benefice, this should not be extended to daily distributions, which are not fruits of the

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benefice, nor are they considered as such in law, but are rather designated under the name of *praesentiaria* or *viglalia* (1). Furthermore, since the law is penal, it must be interpreted strictly. The reasons adduced by the opponents are easily refuted, since: 1. It is false that daily distributions are given because of the benefice; rather, they are given because of the diligence shown in attending the choir, which diligence is clearly distinct from the reason for the benefice, since it does not depend on the benefice. 2. Although a title to the benefice is required to receive the distributions, it does not follow that they are received *from* the benefice: the true, proper, and direct cause for receiving the distributions is the beneficiary's diligence and attendance at the choir; the title of the benefice is not the cause for receiving the distributions, but rather, given the title, distributions would also be given, just as the fruits of the benefice; but it is a condition without which no one would receive distributions, if they could not attend the choir. Furthermore, concerning "all revenues and emoluments, both of dignities and of canonries, of persons, portions," which are to be converted into daily distributions, and to be distributed to others in proportion to their interests, according to the division made by the Bishop, even as the Apostolic See's Delegate, in the very first deduction of fruits, saving the customs of those churches, in which those who do not reside or do not serve receive no more than one-third. (1) Cf. Reiffenstuel, *Ius Can.*, Vol. III, Title 14, nn. 166 and following.

[*Latin ed. p. 736*]

352. If, however, the benefice is not the cause of the distributions made, then these are not, consequently, fruits of the benefice; the Pontifical Decrees and Capitulations suspend from the fruits of the benefice; therefore, they do not suspend from daily distributions. 3. If we admit that those suspended from the perception of the fruits of benefices are also suspended from daily distributions, then those suspended are also to be considered suspended from other uncertain distributions, and that for the same reason that our adversaries advance. For, for example, Canons receive those distributions because they hold a title to a benefice; otherwise, they would not be able to perform those functions in the choir, nor would they be able to receive those distributions as Canons and Beneficiaries. But our adversaries exempt these from the suspension; therefore, they ought to exempt all others as well. Hence, in order to bring this section to a conclusion, Capitulars and Conventuals of Churches and Monasteries, and all others who receive Bishops or other Prelates appointed to the government and administration of those Churches or Monasteries from the same Holy See, incur only a suspension from the fruits of their own benefices which they possess capitularly, and commonly, if we are speaking of Capitulars and Conventuals. But they are not suspended from the fruits of benefices which individuals possess, nor from uncertain revenues from stalls, or other of-

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fices, nor from distributions of any kind whatsoever from which they originate, but they are not removed from the administration of benefices for this reason. All others who are not members of a Chapter or Convent incur a single suspension from the perception of the fruits of their own benefices which they possess individually. Those things, however, which pertain to offices, and other rights attached to benefices, remain entirely intact for all, since in the law concerning the single suspension from the perception of the fruits of benefices, it is said: "But it is fitting that favors should be extended." Regarding the cessation of this suspension, it must be noted that it continues at the pleasure of the Holy See for those who have incurred it. But after a Bishop and Prelate has been received, and is in peaceful possession of his See, those who render him due obedience incur no suspension, even if he has not presented the Apostolic Letters; for the act of receiving is completed, and when a Bishop or Prelate peacefully possesses his See, it must be supposed that the Holy See has acquiesced, and has considered the possession of the Church or Monastery to be fully and validly accomplished; otherwise, the aforementioned Bishops and Prelates could not possibly be in peaceful possession.

[*Latin ed. p. 737*]

333 APPENDIX XLIII. Concerning the suspension of any Ordinary who ordains without a title.

To prevent men of the Church, pressed by shameful poverty, from being forced to beg, or to engage in forbidden pursuits for gain, the Council of Trent decreed that all clerics who were to be ordained to the sacred order of Subdeacon should be provided with sufficient income, by which they could lead a virtuous life. It decreed that no one should be promoted to higher orders without a title, which is the right to receive annual fruits according to a sum determined by the Bishop for the honest support of the cleric. Although the Lord Christ commended poverty to His disciples, nowhere did we read that He commanded them to obtain what was necessary for their sustenance by begging. Therefore, in Session XXI, Chapter 2, concerning Reform, the Fathers of Trent decreed the following regarding this matter:

(1) "Since it is unbecoming for those who are dedicated to the sacred ministry to beg, or to engage in any sordid pursuit for gain, and it has been observed that many are admitted to these orders with little discrimination, who obtain ecclesiastical benefices or even suitable positions through various arts and deceptions; the Holy Synod decrees that, from now on, no secular cleric, although otherwise suitable in morals, knowledge, and age, shall be promoted to the sacred orders, unless it is first lawfully established that he possesses a benefice which will provide him with a sufficient and honest livelihood."

(1) "This benefice, indeed, cannot be relinquished unless it is made known that, concerning the title of this benefice, Innocent III, the Apostle,

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spoke these words at the Altar of Zamora: 'Since he who is chosen for service must live according to what is fitting, and he who is repelled must not signify that he is unwilling to serve the Bishop, concerning his reward: the altar is open to him.' Thus, it is clear that clerics should live from the patrimony of Jesus Christ, to whose service they are dedicated, as the very name suggests. For clerics are called 'clergy,' or 'heritage,' because, in their ordination, they are either taken into the heritage of the Lord, or they acquire a heritage in Him, so that they may truly sing with the prophet: 'The Lord is the portion of my inheritance.' It is fitting that clerics should be supported by the stipends of the Church, in which and through which they are dedicated to divine service. Till he have rendered to men according to their deeds."

"Although our predecessors wished the ordinations of those who are promoted without a certain title to be considered invalid and void, we, however, desiring to act more kindly, wish to provide for those who have been ordained by ordinaries or their successors, as long as they obtain ecclesiastical benefies through them; lest we seem to neglect the cries of poor clerics, which we believe enter the ears of the Lord of Hosts with a hardened countenance."

[*Latin ed. p. 738*]

354. Let him be promoted, and let this resignation not be admitted, unless it is established that he can conveniently live from elsewhere; otherwise, the resignation is null. Those who possess a patrimony or a pension shall not, henceforth, be able to [receive ordination], unless those whom the bishop judges necessary for the needs or advantages of his churches; and even then, it must first be ascertained that they truly possess that patrimony or pension, and that it is sufficient to sustain them in life. And these [ordinations] shall henceforth not be able to be alienated, extinguished, or remitted without the permission of the Bishop, until they have obtained a sufficient ecclesiastical benefice, or have some other means of supporting themselves; otherwise, the penalties prescribed by the canons will be applied. However, according to the ancient canons, bishops who ordain a cleric without a title were only obligated to provide for him until he had obtained a suitable benefice. This was also established by Alexander III in the Lateran Council: "If a bishop ordains someone without a certain title from which he can obtain the necessities of life, he shall ordain him as a deacon or priest, and shall provide for him as long as it is necessary, until he is assigned a suitable benefice in some church." Unless such a person can support himself from his own or paternal resources.

It is indicated that a cleric can be promoted to higher orders through a patrimonial title, and if he is promoted with such a title, the bishop is not obligated to provide for him. As everyone can see, according to the ancient canons, bishops were bound only by one penalty for providing for

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clerics if they had simply promoted them to higher orders without a just title. We said "simply"; indeed, if a bishop ordained someone both without a title and with a promise not to request support from him, in that case, they would incur a three-year suspension from the conferral of orders. For the edification of our readers, we quote what is written by C. Avanzini, in *Commentarii in Constit. Apostolicae Sedis*, Edit. 3, manual. 1874: "Gregory IX, in Chapter 45, *De Simonia*, states: 'If anyone ordains, or presents someone for ordination, receiving a promise or oath from him that he will not trouble him with his support, the ordainer shall be suspended from the conferral of orders, the presenter from the execution of the ordination, and the ordained person shall be suspended from the order thus received, until they merit obtaining a dispensation regarding this from the Apostolic See.'"

This disposition of law, as is evident, is only partially new; for only those who ordain incur this suspension.

[*Latin ed. p. 739*]

355. This disposition is found in the decrees under the title "De Simonia," because the case presented pertains to simony. Nor did the Council of Trent invalidate this legal disposition, but rather, in this matter, it renewed the ancient canons. (1) Indeed, the Council of Trent, in its decrees concerning the title "S. Ordinationis," in Chapter 2 of Session 21 concerning Reforms, concluded this section with these words: "Innovating the penalties of the ancient canons concerning these matters; therefore, the disposition of Gregory IX, of which I speak, should be considered renewed, even though it might seem to pertain to simony."

a) Regarding this matter, there was indeed some doubt after the Council of Trent concerning those words: "Innovating the penalties of the ancient canons concerning these matters." There were certain penalties of the ancient law contained in the Decree of Gratian, canon "Neminem," and canon "Sanctorum," in Dist. 70, by which perpetual deprivation from the exercise of the ministry was imposed upon those who were ordained without a title, and this was done to the detriment of the one who ordained without a title. But there were other penalties that were less ancient, which had superseded those most ancient ones, and these are those that are read in the Decrees, Chapters 2, 4, 16, and 23 concerning "Praebendis," and Chapter 37 of the same title, in 6, which penalties do not apply to those who are ordained, but to those who ordain, and without censure; for in these chapters, this principle alone is maintained: that the one who ordains without a title, ordaining a cleric into the sacred orders, is obligated to provide him with suitable sustenance until he is provided with a title by the same ordainer or by another, with the consent of the ordainer.

The Holy Congregation, as an authentic interpreter of the Council of Trent, in resolving doubts, according to what Fagnanus states in chapter

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"Cum Secundum, de Praebendis," numbers 63 and following, held this view: that the most ancient penalty is not to be understood as renewed, because that same penalty had already been superseded by subsequent canons, when, however, the case concerned one who was ordained without a title, without any fraud being involved. But, if fraud were involved, for example, if someone deceives a Bishop with a forged and false title, then Fagnanus maintains that the most ancient penalty applies to the one who was thus ordained.

Subsequently, the Constitution "Sanctum et salutare" of Pius V was issued on January 5, 1589, by which that Pope, in addition to other penalties, suspended both the ordainer and the one ordained, without making any distinction, unless a just error or a probable ignorance of the facts excused the Bishop.

However, we observe that, in the Tridentine decrees, there is nothing concerning a pact of non-molestation concerning the provision of a Bishop, but rather, there is only mention of a cleric not being promoted to higher orders without a just title.

[*Latin ed. p. 740*]

356. "Concerning the matter of ecclesiastical promotions, a decree was issued on November 17, 1461, which Pope Clement VIII reissued in Rome on February 28, 1596. Thus, the situation remained as it had been. Finally, Pope Urban VIII, in the Constitution *Secretis*, issued on December 11, 1624, among other things, permanently suspended those who, having obtained promotion to the orders, did so with false or fabricated, or with spurious, titles of benefice or patrimony. This is what Fagnanus had previously stated, and which the Holy Congregation of the Council confirmed on November 27, 1610, as reported by Benedict XIV in *Institutiones ecclésiasticæ*, 26, n. 16.

b) Here, the question arises: What is to be understood today, after the Apostolic Constitution concerning secular clergy, regarding those who may have been ordained with a defective title?

Answer: I believe that no censure is imposed, firstly because the suspension inflicted by Urban VIII has ceased, and secondly because the expression used in Trent, which, as I have explained, has long been doubted, and which introduced new penalties in place of those of the ancient canons, seems also to have ceased, since the Apostolic Constitution, renewing the decrees of Trent, does not appear to have renewed the penalties of Trent, which were indirectly imposed.

Given these premises from the learned Avanzini, what did Pope Pius IX decide? He decreed that those who ordain someone without a title of benefice or patrimony, with the agreement that the ordained person will not request support from the ordainer, incur a suspension for three years

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from the conferral of orders. And above all, it must be inquired: After Pius's suspension, are those who ordain in such a manner obligated to provide support to the clergy they have ordained, until they have provided a sufficient title, as was determined in the ancient law? The reason for this question is that in the Apostolic Constitution, only certain censures are limited; consequently, the penalties established remain in full force, and do not involve any censure.

It is clear, however, that in the cited passage, Pope Pius IX modified the decree of Gregory IX, by which a three-year suspension from the conferral of orders was imposed on the ordainer. In the cited Constitution of Urban VIII, *Secretis*, those who were promoted were subject to the penalty of perpetual suspension. In the Constitution *Cum ex sacrorum* issued by Pius II, which Urban VIII did not repeal, the matter concerned not those who were promoted without a title, but those clerics who, some outside the times established by law, some before the legitimate age, and some without proper dispensations, had been promoted to the sacred orders. From this, we can understand that those penalties are not to be applied to the present case. Furthermore, it must be added that, according to Pius II, no penalty was decreed against the ordainers, but only a suspension against those who were ordained. But neither..."

[*Latin ed. p. 741*]

357. For this reason, when we are subject to a hateful and strictly interpreted law, if such an agreement is lacking, a priest ordained in Clairac without a benefice or patrimony does not incur this three-year suspension. However, according to the disposition of the Council of Trent, the title must be either an ecclesiastical benefice that provides the priest with an honest livelihood, which he also peacefully possesses. Therefore, a mere nomination, presentation to a benefice, and even less a promise, cannot constitute a title for Holy Orders; nor can a lay chaplaincy, since it is not an ecclesiastical benefice, and it has been declared not to be suitable for the title of ordination. The Holy Congregation of the Council, on November 26, 1723, (1) decreed that several and prominent canonists subjected bishops who ordained in this manner to the penalties for ordaining clerics without provision. From this, we infer that this penalty has fallen into disuse, and has not been renewed by Pope Pius IX through any agreement, although he was concerned in his Constitution on certain matters to be corrected. After these things, from the reading of the chapter, it seems clear that this suspension applies to those ordinaries who ordain someone without a benefice or patrimony, with the agreement that the ordained person will not request support from them. Consequently, it is not sufficient to avoid incurring this penalty that an ordinary promotes someone to the diaconate without a benefice or patrimony, but it is also necessary that there be a prior agreement regarding not requesting support. (1) Cf. Thesaurum Resolutionum

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S. Congr. Concilii, Vol. 2, page 551. However, such purely lay chaplaincies can constitute a title, as stated in Vol. 1, page 450, n. 399: "It is asked whether the title of ordination can be granted by the Formulary of Canon Law, Appendix, Part 3, Limen, Instruction." The reason is because, as stated in Lucidi De Visitatione SS., "Quaeritur itaque an titulum ordinationis...Limini praebere Instr." However, Monacellus Morenus denies that these chaplaincies, and therefore benefits, can serve for this purpose, so that someone can be ordained with a title of benefice with these chaplaincies. But, although these chaplaincies cannot constitute a title of benefice, nevertheless, they can at least constitute a title of patrimony, so that someone who is ordained with them should be said to be ordained not with a title of benefice, but with a title of patrimony. This conclusion is also accepted and embraced by Monacellus Zoe, cited, n. 16, who says: "Indeed, they obtain, as it is concluded, a title for those chaplaincies, not as a title of benefice, but as a title of patrimony." N. 400. This opinion can be confirmed by the example of those foundations that are called sacred patrimonies, which are instituted by testators and assigned to a group of people for the sacred orders. "Patr. Sacr." was that which was being discussed in Ravenna. They are, to be certain, to be received, as of July 19, 1783. In this, if these, which commonly adhere to these sacred patrimonies, are added, the condition was that the chaplain, once otherwise provided for, would lose the right to the chaplaincy and another chaplain could be nominated, according to the law of the foundation. Therefore, when Andrew Cignani, who had been nominated to that sacred patrimony, and

[*Latin ed. p. 742*]

358. Some maintain that this benefice ought to be perpetual, since otherwise a cleric ordained to that title might be deprived of it, either at any time or after a certain period, and would be forced to beg, which would be a disgrace to the ecclesiastical order. However, if the benefice was conferred with the condition that the cleric could only be deprived of it when another sufficient title was available, then the title is considered valid and legitimate, and is equivalent to a perpetual benefice, since the cleric will never lack a necessary title. (1) A cleric can be promoted to a higher order by a title of patronage, which includes any irrevocable donation of stable property made for the purpose of ordaining him, whereby he can be honorably supported. In order for this to be legally established, the following conditions must be met: first, it must produce sufficient income for the honest support of the cleric being ordained, according to the established rate or custom of the diocese, which varies; and second, the cleric must actually obtain possession of the assigned property, through a public instrument duly executed according to the established custom. (2) However, if a benefice is lacking, and therefore a cleric who had previously obtained a certain parish church through that benefice, the Holy See's Congregation

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has defined that this constitutes a reason for a new nomination. (1) On this matter, Lucidi writes in *De Visitatione Sacrorum Liminum*, Vol. 1, page 449, note 397: "But if the patron, or anyone else to whom the nomination of a benefice or chaplaincy belongs, promises to the Bishop, in a valid legal form, that he will provide for the benefice or chaplaincy, as long as he lives (that is, the patron, and not the cleric), or that provision will be made for him through another suitable title, so that the title, which would otherwise be precarious, becomes perpetual for the purpose in question, then the benefice or chaplaincy can be admitted for the purpose of patronage." (2) Furthermore, Benedict XIV, in *Inst. Eccles.* 26, 9, states: "The Council's Congregation has sometimes granted dispensations, due to a scarcity of priests or the poverty of the places, so that someone may be promoted to a removable chaplaincy, provided that there is sufficient income for his support, with the obligation to remove him upon ordination, during his life, December 1690, and April 17th, valid; as was granted in one case in 1706." (2) Therefore, it cannot be established as a future inheritance to be obtained from the father, because until it is transferred, it confers no benefit on the heir. Nor can it be based on the profits of one's own industry. For the Holy Congregation was consulted in October 1589: "If someone has only what he earns through industry, through an honest profession, such as being a musician, a grammar teacher, a painter, a writer, or another lawful profession; can he be promoted?" The decree was: "If it is not sufficient for the support of life, he cannot." As was decreed by the same Holy Congregation on November 29, 1670: "The community of Saint Angel in the diocese of Sypontinae presents a cleric who is to be admitted to the sacred orders, having been assigned a patrimony in movable goods."

[*Latin ed. p. 743*]

359. The endowments assigned must be certain and definite; for example, a specific field, this house, etc. It would not suffice if an indefinite and undivided portion were assigned as endowment; for example, a part of this or that field, of a house, etc., unless its position, quantity, and income are clearly expressed and determined. 3°. Finally, such endowments must be stable assets; in this regard, we cite the following from the aforementioned work of Lucidi, loc. cit., n. 408, page 454: "Concerning the aforementioned endowment, it must also be noted that, 'no one is (so the Holy Congregation of Councils states in the memorial of Bruges, 1855, §, concerning this matter),' who does not know that a sacred endowment must be constituted from certain, stable, and productive assets." Hence, it follows that Uzes, according to the laws established by St. Pius V, since they are considered among the stable assets (Benedict XIV, *Inst. Eccl.* 26, n. 12), can contribute to the canonical endowment, provided that the precautions prescribed by the Holy Congregation of Councils in *Nullius*, June 21, 1629, book 14, decree, page 109, are observed, which reads as follows: "Is it permissible to

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constitute endowments for clerics destined for the sacred orders based on perpetual annual Uzes? The Holy Congregation responded: It is possible to constitute endowments based on perpetual Uzes attached to movable property, and with legitimate precautions, and provided that the nature of the Uzes is such that, in the event of the restoration of the Uzes, a sum sufficient to cover the debt must be deposited with the sacred institution, or with a person of faith and ability suitable for the purpose of investing it as quickly as possible in other Uzes of the same quality, or in stable assets, or in non-vacant mountain properties. During this period of endowment, it is not permissible, except as prescribed by the Holy Canons and the Holy Council of Trent, to alienate [the assets], for the purpose of making the investment, which the ordained are themselves obligated to do, under pain of suspension for the very act." "However, if an endowment is constituted from animals other than those intended for ordination, and this results in a serious loss for the same community, and it is believed to be contrary to canonical provisions, the aggrieved party may appeal to have it declared whether the endowment can be constituted from said animals." The Holy Congregation responded: "Also, it is not permissible to assign assets based on a personal obligation, and the answer is negative, as stated in Bruges, 1855, §." "Furthermore, when the Emperor granted a diploma, or title of endowment, to a Florentine cleric for his honest sustenance, as long as he was provided with a sufficient benefit, and it was called into SS. 2:9: "And made him king over Galaad, and over Gessuri, and over Jezrahel, and over Ephraim, and over Benjamin, and over all Israel." whether he could be lawfully ordained for the endowment, the response was: 'Even if he promised, by his own personal obligation, to make the endowment sufficient, it is not permissible,' as is clear from Lucidi, loc. cit., 458." Negative.

[*Latin ed. p. 744*]

360. It behooves the Ordinaries to ensure that a valid promise is made according to the form of law, that in the case of redemption, as previously expressed, provision will be made for the sustenance of the ordinands. Another title by which a cleric can be promoted to the higher orders, according to the decree of the Council of Trent, is a pension. In this matter, the Holy Congregation of the Council, in Suanen, Tit. Sac. Ord., on July 28, 1838, decreed that the pension must not only suffice for the proper sustenance of the cleric, but must also be perpetual, so that it may confer a valid title to ordination, lasting for the lifetime of the recipient. Furthermore, Rigantius states in Reg. 24 Cancel. §. 5, n. 153 et seq., that a pension granted by the Bishop, reserved for the cleric in place of some benefit, is not sufficient for the canonical title of ordination, because it cannot be perpetual, but its duration depends on the life of the holder, who may precede the pensioner. In short, the title of a pension must be valid only if it is subject to the same conditions as a patrimony. However, if a pension has been granted

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to a cleric by the Roman Pontiff in perpetuity, along with some benefit, and this burden is attached to it, so that the pension is not a benefit or a canonry, but the benefit itself is affected, and subsequently, according to synodal laws or diocesan custom, it is sufficient for the honorable support of the cleric, then it can, with the best of right, be considered a title of patrimony. However, only those should be promoted to the higher orders with the title of patrimony and pension, whom the Bishops have judged to be suitable for the necessity or convenience of their churches, as the Fathers of Trent decreed. For this reason, if such necessity or convenience is lacking, which is very difficult to lack, no cleric should be admitted to the higher orders with the title of patrimony or pension. We say nothing further about the title of poverty, by which religious persons are promoted after having taken solemn vows, except for the students of the Society of Jesus, who may be admitted to the sacred orders with this title after having completed two years of novitiate and having taken simple vows; nor about the title of mission, by which those who have obtained apostolic faculties for the mission may be ordained; nor about the title of the common table, by which clerics living in community, like regular canons, may be promoted, without, however, having taken any vows or solemnities; nor about the title of dispensation, by which now, with apostolic concession, many clerics are promoted, since otherwise they cannot be provided for due to the lack of ecclesiastical goods and the needs of the churches; these are particular titles, which are of no concern to us. Finally, we add this: for the sacrament of ordination, a title is required which is both legitimate and valid, either by law...

[*Latin ed. p. 745*]

This [suspension] is instituted, or by dispensation and authority of the Roman Pontiff. With these premises, let us see who incurs this three-year suspension, and for what fault. 1. As for the first point, those who ordain someone without a title of benefice or patrimony, with the agreement that the ordained person will not request sustenance from them, incur this suspension. Therefore, only Bishops and local Ordinaries incur this suspension, to whom it pertains to promote those subject to them in the sacred orders. It should be noted that, since Abbots regular, for example, are not Bishops of any diocese, and are located in the diocese of a Bishop, they send, by testimonial letters, to the Bishop in whose diocese their territory is located, or to any other, according to the faculties with which they have been endowed by the Apostolic See, the person to be ordained in the sacred orders, and they ought to send. What then, if the person to be ordained does not have a legitimate title, but has testimonial letters from his Abbot, in which it is affirmed that he can legitimately be ordained a priest by Bishop NN? 361 If the person to be ordained has testimonial letters from his Ordinary, by which he can be legitimately ordained, the Bishop who ordains

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can act, that is, he can proceed with the ordination, after again examining, with regard to the proper and necessary knowledge; he should subject the person to be ordained, so that he himself may know whether he is truly suitable, and he should assume that everything else has been completed by the Ordinary of the person to be ordained. Furthermore, in the report, those who ordain in Piano Capite must be understood to be the Ordinaries of the person to be ordained, who truly have the power to promote their own clergy, and not others, to whom, for necessity or for some other reason, the person to be ordained is sent, and who, in this case, are rather executors of the will of the Ordinary who sends the person to be promoted, and not truly ordaining, since without the will and testimonial letters of the local Ordinary, they could not promote that person. What follows from this is evident: for incurring the suspension, it is required that there be an agreement that the ordained person will not request sustenance from the ordainer; but this can certainly be requested from one's own Bishop, not from a foreign one who confers the sacred orders by commission. Indeed, it is not the Bishop who ordains, but the Ordinary of the person to be promoted who incurs this suspension; for in this case, it does not pertain to the Bishop who is ordaining to inquire whether everything has been done according to the established laws regarding the ordination of the person, for this pertains to the abbatial curia, but whether he incurs this suspension if the Bishop to whom the person to be ordained is sent, certainly knows that he lacks a legitimate title, and ordains him; indeed, for incurring the suspension, it is required that there be an agreement, not to request sustenance from the ordainer; which, when done with the ordainer of this kind, namely, a foreigner, cannot be...

[*Latin ed. p. 746*]

362. He may do so, and in doing so, no suspension is incurred. II. However, this suspension pertains to the conferral of orders; therefore, since it has been limited by the legislator to this one act, the penalty cannot be extended to other effects; that is, to other acts which are not the conferral of orders. Hence, this Bishop will be able to perform Pontifical functions, administer all the sacraments except the sacrament of orders, and exercise all the acts of episcopal jurisdiction, with this exception: that he may not transmit to other Bishops clerics to be ordained, whom he himself is unable to ordain due to the three-year suspension. Nor does this last point contradict what we said above concerning ordinaries, by which name are also understood abbots who, within a certain territory, exercise a jurisdiction similar to that of a bishop, and who, for the future, cannot confer major orders upon their subjects. Indeed, these are suspended for three years from conferring minor orders, if they transgress the law. However, the penalty remains in full force for Bishops, even though they may transmit clerics to be ordained to other subordinate Bishops; and, furthermore, the Diocese should not suffer

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any spiritual detriment on account of the Bishop's penalty. The commentators disagree as to whether a Bishop thus suspended is also prohibited from conferring the first clerical tonsure. And cl. De Varceno, *Theol. moral.*, Vol. II, p. 524, affirms this, using these words: "Those who ordain without title, etc., incur a suspension from the conferral of any order, even the tonsure, according to the Constitution of St. Pius V, *Romanus Pontifex Sacrorum*." But other commentators contradict this, and rightly and truly. For the first clerical tonsure is not an order, but a preparation for orders; and since, in the law, those who ordain are suspended for three years from the conferral of orders, and since the law is penal, those who are suspended are not to be understood as being suspended from the conferral of the first clerical tonsure, which is not an order. This would be true even if St. Pius V had established what cl. De Varceno claims: for since, after the publication of the censure, the sentences have force to the extent that they are renewed, and to the extent that they are in accordance with the text of the Constitution, and since, in this case, the matter is about orders, the text of the Constitution of St. Pius V would not be in accordance with the text of the Apostolic Constitution, and therefore the suspension from the conferral of the first clerical tonsure would not bind Bishops who ordain. However, there is nothing in the cited Constitution of St. Pius V that establishes the opinion defended by De Varceno, since there is no mention of the clerical tonsure in it, nor does the Holy Pontiff prescribe anything else except that even regular clerics who are not professed or who live in any way within the community should be ordained according to the form of the decree of the Council of Trent; those who do otherwise are to be suspended for a year from...

[*Latin ed. p. 747*]

3. The granting of such orders suspends the validity of the office itself. Thus, it is reasonable to doubt whether St. Pius V suspended bishops who had transgressed from conferring minor orders, when he speaks of those orders for which a suitable title is required, namely, the major orders, and inflicts suspension for a year from the granting of such orders; therefore, not from the minor orders, much less from the clerical tonsure. The opinion of the Most Reverend De Varceno would have been more persuasive had it been supported by the authority of Pope Pius V, who, in the Constitution *Sanctum et salutare*, dated January 5, 1589, did not suspend from the conferral of any orders, and indeed of the very tonsure itself, those bishops who had not legitimately been promoted to the sacred orders, and forbade them from exercising any pontifical functions, and forbade them from entering the Church, and punished them with other, more severe penalties at the discretion of the Roman Pontiff for the time being. However, no such support for his opinion was offered by the Most Reverend author, not only because such a censure was not renewed by Pope Pius IX in his Constitu-

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tion, but also because Clement VIII, in the Constitution *Romanum Pontificem*, dated February 28, 1596, moderated the aforementioned penalties of Pius V, and reduced them to the provisions of the Constitution of Pius II, and to common law. (1) III. In order for such a suspension to occur, the bishop must promote clerics to the major orders not only without a title of benefice or patrimony, but also with the agreement that the ordained person will not request sustenance from them; therefore, if either of these is lacking, the suspension does not occur. Hence, bishops incur suspension if they knowingly ordain clerics with a false title, which does not provide any income for the honest maintenance of the same, for such a title is, in fact, null and void, and the person should be promoted without a title. (1) Furthermore, considering that those who promote, as well as those who are promoted to these orders, are often subjected to censures and penalties of this kind, and that, due to their multiplication, they harm the souls of these individuals, and that some prelates and bishops proceed too scrupulously in conferring these orders, and that many are deterred from receiving the orders altogether for fear of the aforementioned penalties and censures, to such an extent that the number of clerics and priests is greatly diminished in some places, desiring to provide for the security of all in these matters and for the salvation of souls with paternal charity... we, with the aforementioned letters, refer to the terms of Canon Law, and to the memory of the aforementioned Constitution of Pope Pius II... we decree. Since, from the Sacred Canons... and in accordance with the disposition of the decrees of the Holy Council of Trent, we restrict and reduce, and we abolish the censures and penalties in them, against anyone, except against those who ordain and are ordained through simony, which we wish to remain in full force (leaving all other penalties imposed by the Sacred Canons and Councils against the aforementioned intact and firm),...

[*Latin ed. p. 748*]

364. This is the opinion of all commentators henceforth. However, it should not be said of a Bishop who promotes someone to the priesthood with an insufficient title, (1) or with a fictitious or nominal title. Furthermore, a fictitious title is considered to be that which is assigned to a cleric for the purpose of promotion, without the intention that the assignor should become the true owner of the assigned property. A nominal title, on the other hand, is that which is established by agreement, so that it is to be returned to the donor after ordination. However, in the case of Piano Capite, those who ordain are suspended without a title; in three cases examined, a title is present; and indeed, in the third case, a true title is present; in the second case, legal advice was sought regarding the indemnity of the clerics. Indeed, as Lucidi writes in the cited passage, number 414, he who establishes a fictitious patrimony, if called before a competent judge to pay the fruits of that patrimony, cannot defend

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himself with any contrary agreement whereby he, the ordained, promised to receive nothing from him, even if this promise is confirmed by oath. For the Holy Congregation of the Council, on May 11, 1599, in book 9, decreed, in the words of Benedict XIV, Institutions Ecclesiastical, 26, number 18, after careful consideration, that the donation of that patrimony, for the title of which someone was ordained, is prohibited by the decree of the Council of Trent, Session 21, chapter 2, On Reform, and that the oath of the donor does not confirm it in any way. And also, on May 14, 1671, in book 27, page 43, when it was a matter of a supplement to the patrimony, which someone had added to a cleric by donation, but which had never been received for many years, the Holy Congregation declared that the donor was still obligated to pay the supplement for the years that had passed, and could not be excused later on account of the school work, which the ordained could have pursued. In the first case, however, a title is present, although it is insufficient; and conversely, those who ordain are suspended without any title, benefit, or patrimony; for this reason, that case is different. Therefore, let no one infer that someone is obligated to receive income from established properties if he obtains an honest livelihood from elsewhere; rather, he can dispose of it at his discretion. For a son, to whom his father has assigned a patrimony, can renounce all income from it, if he has another source from which he can live honestly. From this, one thing must be noted: that the cleric must have from the assigned patrimony what is necessary for himself.

(1) Regarding the insufficient title, the cleric Ciolli, in his Practical Commentary, page 129, writes: "It seems that this requirement... is understood as meaning that the ordained person does not have a title of benefit," or "that he has only an insufficient title." "The suspension applies to the patrimony, or..."

[*Latin ed. p. 749*]

365. For the honest sustenance of life, certain things are necessary at all times and in all circumstances, and one must never resort to begging, nor engage in forbidden pursuits, lest it bring disgrace to the ecclesiastical order. Furthermore, just as one who has assigned revenues should not be compelled to distribute them to alms, so too, one can freely give to a benefactor, a father, or anyone else, not under any agreement. III. Such a suspension lasts for three years; and once the three years have elapsed, it ceases by itself; before the three years expire, absolution is reserved to the Supreme Pontiff. APPENDIX XLIV. Concerning the suspension of one who ordains a subject belonging to another diocese without the dismissal letters of that bishop, or of one's own subject who has resided elsewhere for so long as to have incurred some impediment there, without the testimonial letters of the ordinary of that place. A third suspension is reserved to the Roman Pontiff in the Apostolic Constitution, in these words: "Those who

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ordain a subject belonging to another diocese, even under the pretext of conferring a benefit immediately, or one that has already been conferred, but is by no means sufficient, without the dismissal letters of that bishop; or even a subject of their own, who has resided elsewhere for so long as to have incurred a canonical impediment there, without the testimonial letters of the ordinary of that place, incur a suspension for one year by the very law of the administration of the orders." (1) (1) It will not be amiss to immediately present what is written by Cl. Peter Avanzini in *Manuale*, page 82, Edit. III, 1871. The question may arise: how is this reconciled with the disposition of the Council of Trent, Session 23, Chapter 8, on Reform, which states: "Let each one be promoted or approved, as the case may be, by the ordinary who has jurisdiction over him; and let no one seek promotion from another, unless the ordinary himself allows it. If anyone, however, through general or special statutes, or through the testimony of his own ordinary, is suspended from the administration of orders for a year, and the ordinary sees fit, he may, for as long as it is permitted, grant him dispensation." If the suspended person does not comply, he shall be suspended. However, there is no opposition between this and the third canon of the Constitution of which we are speaking. For the disposition of Trent seems to refer to a particular case, namely, that of one who seeks promotion from another who is not his own bishop, neither by reason of origin nor of domicile, nor by reason of benefice or familiarity; it also refers to the case of one who may have obtained some apostolic rescript, by virtue of which he could be ordained by another bishop; and it also refers to the case of a bishop who, by virtue of some privilege, could ordain anyone who comes to him, as is read in Session 14, Chapter 2, on Reform. In these cases, both the bishop who would ordain a subject belonging to another diocese without the aforementioned testimonial letters, and the one who is ordained, would fall under the censure of Trent. If we examine the penalties imposed by the Council of Trent, it will become clear. Furthermore, while suspensions from...

[*Latin ed. p. 750*]

366 Such a suspension is imposed upon him, and certain regulations are prescribed concerning the collation of benefices, so that no one may infringe upon the rights and authority of other bishops over their subjects (2), nor may the unworthy be admitted to the ecclesiastical order (1). The entire reason for this, which is also now dependent on the ordination of a foreigner, is based on the following four considerations:

1. The reason for origin, by which it is determined to whom a bishop becomes subject, namely, whether the subjects are those of that bishop, and how someone who is not a subject can become one, so that he may be promoted by his own bishop; but if someone is rightly promoted to the sacred orders, and his parents have their domicile in that diocese, then he must

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be ordained there. However, in such matters, we follow the Constitution *Speculatores*, which states that:

(1) This is beautifully expressed by Pope Innocent XII in the Constitution *Speculatores*, issued on November 4, 1694, in these words: "We have proposed to adopt a method by which, preserving, before merit of labor, before the time of examination, before experience of discipline, the priestly honor is not granted to those who are not worthy, nor are sacrilegious individuals, who were yesterday heretics, today priests, yesterday profane, today ministers of the sacred rites, old in vice, unlearned in virtue, and recent students, created at the same time as masters of piety; but only those, according to the laws established by our predecessors, are promoted from the humble rank of the faithful people to the dignity of the sacred administration, who, after a change of secular life, have been proven by long intercourse among the clergy, and who have learned for a long time what they will later be required to teach to others."

(2) It is fitting to hear what grieves the Most Holy Pope:

§ 2: "From the complaints presented to us, we have learned that more and more serious offenses are being committed against the sacred order, namely, the impudence of those sacrilegious individuals, whose disregard for their own salvation, who, perhaps denied ecclesiastical orders by their own prelates, or who, because of certain canonical impediments, rightly fear that they will be denied them, seek out foreign bishops, not those of Jesus Christ, but those who seek to harm their flocks, and who, without fearing the numerous canonical condemnations against those who usurp the rights of another people, and without the support of their own prelates, that is, without letters of dismissal and commendation, but rather, often without their knowledge and even against their will, under less legitimate titles of ecclesiastical benefit, of origin, domicile, or even familiarity and continued communion with the ordaining bishops, illegitimately receive, and thus, not entering by the door, they nevertheless do not hesitate to inhabit the Lord's house with a stain, they turn sacrifice into sacrilege, they bring judgment upon themselves without mercy, and yet they presume to please God, but they do not please, but rather offend Him, as they seem to say in their hearts: 'Why do you require it?'"

[*Latin ed. p. 751*]

367 to whose Diocese the father drew his origin. All of these things are thus decreed by Innocent XII, § 4, in the cited Constitution: "He is to be considered, with regard to the matter of origin, only that one who has been naturally born in that Diocese in which he desires to be promoted to the orders; provided, however, that if he was born there by accident, that is, by some temporary circumstance, such as a journey, an office, a mission, commerce, or any other temporary stay or residence of his father in that place, then in such a case, no such accidental birth is to be considered,

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but only a true and natural birth of the father is to be taken into account." However, if the person to be ordained has resided in the place where he was born by accident for so long a time that he might have incurred some canonical impediment there, then the ordaining Bishop is also obliged to request testimonial letters from the Bishop of that place, if it should happen that he leaves that place after reaching adulthood. Innocent XII also states this in the aforementioned passage: "And if he has resided in that upon place, where, as previously stated, he was born by accident, for such a length of time that he might have incurred some other canonical impediment there, then he is also to present testimonial letters from the Ordinary of that place, as mentioned above, and these are to be similarly presented to the ordaining Bishop by him, for the purpose of conferring the orders." These regulations are found to apply to legitimate sons. But if the person to be promoted is illegitimate, he is to be ordained by the Bishop of the Diocese in which the mother has her domicile, or, if the mother has not acquired a domicile anywhere, by the Bishop of the place where the mother originated, or testimonial letters of dismissal are to be requested if he is to be promoted elsewhere. This is thoroughly explained by the commentators on the Sacred Canons. Ferraris, in *Bibliotheca Canonica*, Voc. *Ordo*, Art. III, n. 20, writes: "If the son is illegitimate, then, if a dispensation is granted for him to receive the orders, the origin of the mother must be considered, and not that of the father, because illegitimate sons follow the mother and her origin." *L. Cum legitimae 19 ff. De Statu hominum. L. Municipium 1, §. final., ff. Ad municipalem; et L. Eius qui 19 ff. eodem.* Reiffenstuel, in *lib. 1 Decret. Tit. XI n. 92*, teaches the same thing: "Indeed," he says, "only the legitimate are to be excepted; for these follow the mother and her origin. And therefore, if a dispensation is granted for a defect of birth, they can be ordained in the place of the mother's origin, when she has not contracted a domicile elsewhere." (i) desires, let him consult Giraldi, *Expositio Iuris Pontificii*, 96, where the tradition handed down by the Canonist Romualdo, Secretary of the Vicariate of the City, in *Cap. 1 Not. IX*, is extensively reported in that place.

[*Latin ed. p. 752*]

368 If, however, someone is to be promoted from among exposed infants, whose origin and parents are unknown, and who are either legitimate or may become so, then the place of origin for such a person shall be the institution where the exposed infant was received, or the Diocese in which they were naturally born, if this can be ascertained. This is taught by Reiffeqstuel, TU. XI, n. 93, among others: "Finally, speaking of exposed infants, whose parents are unknown, they can be ordained in the Diocese in which they were naturally born; or, if this cannot be ascertained, in the place where the exposed infants are found." Giraldi, in his *Expositio Iuris Pontificii*, Part II, section 96, page 950, Note III, states more clearly: "The place of origin of ex-

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posed infants, that is, those whose parents and place of birth are unknown, and who are assigned to a particular institution, is the very place where the exposed infants were found, for the purpose of their being promoted to the orders." Exposed infants are to be ordained by the Bishop who is the Ordinary of the place where the exposed infants are. For, since the parents are unknown, they have undoubtedly become citizens of that place. If exposed infants are found in several places, then attention should be given not to the place where they were first found and baptized, if they were exposed there almost by accident, but to the institution to which they have been entrusted for their care and upbringing. This institution should also be considered, even if it is known that the infants were born in a place where there is a strong presumption of their birth, when otherwise it would seem impossible for the same parents to be unknown if they had established a residence there. If, however, it is known of the place of origin or domicile of only the mother, then this should be considered. Finally, Ferraris, in *Vocabulum Ordo*, Art. III, n. 21, states: "An exposed infant, whose parents are unknown, can be ordained in the Diocese in which he was naturally born. Or, if this cannot be ascertained, he can be ordained in the Diocese of the place where he was found." The proper Bishop for ordination is the Bishop of the domicile, that is, the one in whose Diocese the person to be promoted has established a stable residence, or with the intention of residing there permanently. We also find this stated by Innocent XII in the aforementioned passage, in these words: "But if the father remains in a foreign place, where his son was born, for so long, and with such an intention, that he truly establishes a domicile there, then, for the ordination of that same son, the origin of the father should not be considered, but rather the domicile legitimately established by the father." Indeed, this is reasonable and just; for if the son, or the person to be promoted to the orders, was born in a place where the father had established and acquired a domicile, and from then on, freedom from impediment is not necessary for the father but for the son, it is clear that if the son, in the place of the domicile established by the father, does not have an impediment,

[*Latin ed. p. 753*]

369. It is understood that, in the place of his paternal origin, one cannot truly possess a domicile, since he has not yet been born, or if, after his birth, he has resided there only temporarily. However, since it is possible that he might have resided there at an age when he could have acquired a canonical domicile, it may happen that he contracted such a domicile. For it can happen that a son is born elsewhere, and after his birth, his father establishes his domicile in another place, from which the father moves to another city or place; hence, Innocent [XII] declares that in such a case, testimonial letters should be requested not only from the Bishop of the place where the domicile is located, but also from the place from which

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he departed. "If anyone has departed from the place of his origin at an age when he could have become subject to a canonical impediment by demonstrating his intention to reside there permanently, even the Ordinary of his origin must, as above, provide testimonial letters, and in both cases, mention of these must be made in the documents."

§. 5. Thirdly, the proper Bishop is also the Bishop of the benefice, that is, he in whose diocese the benefice is located. It is understood that, although he may have been born elsewhere, he has nevertheless established his domicile there permanently, either by residing there for ten years, or by transferring a substantial part of his affairs and possessions there, along with his household, and by residing there for a considerable time (1). Innocent XII requires all these conditions to be met, as stated in the aforementioned passage, §. 3. "Although a cleric may obtain a benefice in a foreign diocese, he is nevertheless subject to the jurisdiction of that Bishop." (1) *Honorante ad triennium Praxis Sac. Trib. Vic. cap. 9, eiusmodi considerabile tempus coarctat.*

[*Latin ed. p. 754*]

370. We decree and declare that the bishops in whose dioceses such benefices are situated shall, from now on, observe the following rule in this matter: that no one shall be admitted to the reception of the sacred orders, unless the aforementioned benefice provides for him a suitable means of sustenance, either according to a synodal assessment, or, if that is lacking, according to the custom of the region, for the purpose of preparing him for the sacred orders, after deducting expenses, and that he peacefully possesses this benefice, without any need to supplement what is lacking from the fruits of the same benefice, even if he possesses a rich patrimony, which he, the one to be ordained, holds in the same, or any other, diocese. And the bishop who ordains shall, in the act of conferring the orders, make mention of the aforementioned testimonies in writing, as well as of the income of the benefice in question.

However, bishops who have provided such clerics with a suitable benefice should not be considered able to promote them to the sacred orders without the testimonial letters from the bishop of their origin and domicile; since, according to the decree of Innocent XII, these are necessary in order that the orders may be lawfully conferred. Thus it is stated in § 3.

"Furthermore (we decree and declare) that a cleric who has legitimately already received the clerical tonsure, or has been promoted to lower orders by his own bishop, cannot be promoted to higher orders by another bishop, on account of any benefice obtained in that diocese, unless he has previously obtained testimonial letters from his own bishop, both of origin and domicile, concerning his birth, age, morals, and life, and has presented these to the bishop who is ordaining, to be kept in the records of that court."

It should also be noted what Rigantius teaches in the Regulations of

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Caricell, Apostolic Regulations, XXIV, § III, n. 92 and 103, namely, that testimonial letters granted by the bishop of domicile or origin for the tonsure or for lower orders are not suitable for the reception of higher orders; hence, other testimonial letters are necessary for these, but if testimonial letters have been granted for the reception of the Subdiaconate, for example, then no other letters are necessary for the remaining orders, provided that the cleric has not left the diocese in which he holds the benefice.

Finally, the bishop who is the proper one to promote him is also the one with whom he obtained the title of familiarity, under the conditions which we will indicate below. The Fathers of Trent also approved of such a title in Session XXIII, Chapter 9, On Reform.

[*Latin ed. p. 755*]

"The Bishop," it is stated, "cannot ordain a subdeacon who is not subject to him, unless he has resided with him for three years, and the benefice, whatever it may be, is conferred upon him immediately upon the cessation of any fraud; this, whatever the custom, even if it be one that is not remembered, shall not be to the contrary." However, Innocent XII renewed these very words identically in the aforementioned Constitution, § 6: "Furthermore, no Bishop of a foreign diocese may presume to promote or ordain his own subdeacon to any of the sacred or minor orders, or even to give him the tonsure, without the written testimonials of his own proper origin, or domicile, as mentioned above, and unless the aforementioned subdeacon has served him faithfully and completely for a full three years in his actual service, and has been supported by him at his own expense, and, moreover, the benefice, which is sufficient for his sustenance, according to the aforementioned standard, is conferred upon him immediately, that is, at least within a term of one month from the day of the ordination; and he must also make mention in the testimony of such an ordination of the same familiarity and of the aforementioned letters." Therefore, in order for someone who is subject to a foreign Bishop to acquire the title of familiarity, it is necessary that: 1. He has served the Bishop faithfully for a full and complete three years, and has been under his authority. 2. He is provided with the written testimonials of the Bishop, either of his origin or of his domicile. 3. Finally, he is invested with a benefice immediately, that is, within one month from the day of the ordination, which is sufficient for his honest support. Thus, there are four ways in which someone is subject to a Bishop or Ordinary, or becomes subject: 1. By reason of origin; 2. By reason of domicile; 3. By reason of a benefice; 4. By reason of familiarity. From these things which we have stated above, the explanation of this chapter and of suspension depends. We shall now consider who incurs this suspension, for how long, and for what reason. 1. As far as the first point is concerned, those who ordain incur the suspension. Therefore, all those who have the power to confer orders, but who grant dismissal letters

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to their own clergy to receive orders. Hence, not only Bishops, but also Abbots who have a jurisdiction almost equivalent to that of a Bishop in a certain territory, to whom the Roman Pontiffs have granted the privilege of conferring the clerical tonsure and minor orders, and who are obliged to issue dismissal letters for the major orders to the Bishop in whose diocese the abbatial territory is located, or even to any other person.

[*Latin ed. p. 756*]

372 VII Chapter X concerning Reforms. "It is not permissible to grant, within one year from the day of the vacancy, a license for the ordination of a cleric, nor dismissal letters, or, as some call them, 'letters of dispensation,' either by common law, or by the force of any privilege or custom, to anyone who has not been strictly bound by an ecclesiastical benefice received or to be received. If this is done, the chapter that violates this ecclesiastical law shall be subject to interdict, and those who are ordained in this manner, if they are in minor orders, shall be considered valid, according to the faculties which they have received from the Roman Pontiff. And also, vicars general who have received a special mandate to grant suitable letters to clerics for the reception of orders, or the bishop is absent. (1) Furthermore, vicars capitular, to whom the care of the diocese devolves upon the death of the bishop, until a new bishop takes possession. (2) However, with regard to vicars capitular, the following should be noted, as the Fathers of Trent established in Session XXIV, Cap. XVI, concerning Reforms. (1) All of this is established from Cap. S. De Tempor. Ord. in 6. "Since no one should ordain a cleric of another parish, except with the permission of his superior: the superior is understood in this case to be the bishop, of whose diocese is the one who desires to be promoted to the orders; or in whose diocese the ecclesiastical benefice is located, or who has (even if born elsewhere) his domicile in the same." Also, lower prelates or others, unless they have been specially granted by the Apostolic See the permission to have their own clerics or subordinates ordained by any bishop they choose, or by Episcopal officials (unless this extends to their own office), cannot grant such a license. However, when the bishop is absent, his general vicar in spiritual matters, or (in the case of a vacancy) the chapter, or whoever at that time is responsible for the administration of spiritual affairs, can grant permission for ordination. (2) "Allegation: The vicar general of the bishop, as Barbosa says in *De officio et potestate Episcopi*, n. 9, cannot grant such dismissal letters, since this does not extend to the vicariate office, unless by a special mandate of the bishop, or in the absence of the bishop, or when the bishop is absent. " This opinion is defended by the authority of many Doctors. (3) What the Council of Trent established in this place concerning chapters must be understood in relation to vicars capitular, who are to be elected by the chapter within eight days after the death of the bishop, as the same Council established in Session XXIV, Cap. XVI, concerning Reforms. And

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therefore, the chapter cannot grant these dismissal letters by itself, within the year, as it could not grant them after the year, but only through a vicar elected by it, to whom, privately, not cumulatively with the same chapter, such jurisdiction pertains, as is clear from the declaration of October 1655, of the Congregation of the Council, even if the elected one was in Neritonen, with this or another restriction on the faculty, which today the chapter, considering the subsequent decrees of the same Congregation related by Benedict XIV, section 100, *De synodo dioecesana*, book IV, part 2, cannot restrict or reserve for itself in the slightest. See Cap. 8, n. 10, Giraldi, Tom. II.

[*Latin ed. p. 757*]

373. Those who have been instituted [into Holy Orders] shall not enjoy any clerical privilege, especially in criminal matters. However, concerning those who are subject to ecclesiastical penalties, the execution of such penalties shall be suspended by law, at the discretion of the future Ordinary. Therefore, the Chapter, or the Vicar Capitular, during a vacancy of the See that has not yet been filled, can only grant letters of dispensation to those who are compelled to receive them because of the acceptance or prospective acceptance of a benefice; he will not be able to grant such letters for a year after the vacancy has been filled. (1) Those subject to penalties in Trent will be treated as follows, as we shall see when we discuss suspensions and interdicts concerning those from Trent. However, if the Vicar Capitular grants letters of dispensation to a cleric within a year, which were granted by the deceased Bishop, so that he may receive Holy Orders within that year, he will incur no penalty; for the granting of these letters is a grace, which does not expire with the death of the grantor, nor through the renunciation of the episcopacy, as declared by the Sacred Congregation of Bishops and Regular Canons in Oriens, November 12, 1600. Similarly, they do not expire if granted by the same Vicar Capitular, even if he ceases [in office]. Therefore, if the Vicar Capitular grants such letters of dispensation to a cleric within a year, (1) It is advisable to present various decrees or declarations from Lucidi, as we transcribe from his work, Op. cit., Vol. 1, part 2, page 151, number 71. Several doubts have arisen concerning the granting of letters of dispensation by the Vicar Capitular within a year of the vacancy of the See, namely: 1. Can he grant them for the first tonsure to someone who is not bound by a benefice? 2. Can he also grant them for the acquisition of a pension? 3. Can he grant them to a layman presented for a simple benefice by right of patronage, on the condition that he will begin his tonsure within four months? 4. Can he grant them to someone holding a benefice with the obligation to celebrate Mass himself? Regarding 1. The Congregation of Cardinals in Burgo, February 10, 1594, judged that it is possible, and with this opinion of the same Congregation in mind, as Gallemart reports in Chapter X, Session 7, this head [of the decree] does not include the first

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tonsure. Regarding 2. It was also judged that he cannot grant this special faculty unless he has permission, as stated in Decret, page 265. And rightly so; for in the decree of Burgo, the Apostolic See, in the Council of May 4th, granted the capitular the faculty of granting letters of dispensation within a year of the vacancy of the See, to a cleric who has received, or is about to receive, a benefice; but a pension is truly and properly not a benefice, nor does it come under this provision. Regarding 3. In the case of a benefice, Squillacen, 1594, responded affirmatively. And there seems to be no room for doubt; since Trent speaks generally of someone bound by a benefice, it does not exclude a simple benefice. Furthermore, when it comes to the first tonsure alone, the answer given to doubt 1 is already sufficient. Regarding 4, in Ripatransone, in March 1634, it was answered that it is possible, as stated in the decree.

[*Latin ed. p. 758*]

374. Of this, the jurisdiction ceases, unless the suspension, following the censure, is revoked by the same authority; the lapse of time itself, by its own right, removes it, as if it had been defined by the Congregation; this is the common opinion of the interpreters of pontifical law, as stated by Barbosa and Navarro in *Cap. Nullus de temp. ordin.* (1).

II. Those who are suspended by a penalty of suspension for a full year, are held by the administration of the orders, whether of minor or major orders, or by collation; for the law speaks generally and distinctly: "Therefore, a clerical tonsure is not to be conferred, which is not an order." (2) For this reason, this suspension ceases of its own accord after one year; but the absolute absolution thereof is reserved to the Roman Pontiff; from this, no one can be absolved without his authority, except when absolved by the Holy See, or by those to whom the Holy See has granted the power to absolve; for once the impediment is removed, the thing itself returns to its former state, and everyone who is not impeded can use his own right.

Furthermore, this opinion is held by many, as we shall pass over others, such as Schmalzgrueber in *lib. V, tit. 39, n. 253*, and Alterius in *Tom. II, Disp. VIII, Cap. i, page 121-122*. (3)

III. As for those who desire to know more on this matter, let them consult Lucidi, *Op. cit.*, Tom. I, pages 152, 153. (2) This opinion is common and certain, since penal law can extend beyond the natural meaning of the words, and it defends the intention of the legislator, as stated by Schmalzgrueber, *Part. 1, tit. XI, n. 66*.

It is certain that one is not to be suspended from the first tonsure. This is clear from the text; for here it speaks distinctly of the conferring of orders; therefore, it should apply to the first tonsure, which is not an order.

If Innocent XI, in the aforementioned *Bulla Speculatores, §. 8*, had stated: "In these premises, or in any of them, if things should happen

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differently, the one who ordains is suspended from the conferring of orders for a year, and the one who has received the orders is suspended in the execution of his office, as long as it seems expedient to his own Ordinary, by that very fact."

However, Pope Pius IX limited the censures, he did not extend them.

(3) He writes: "It is certain among all Doctors, except Decius... that a suspension pronounced for a certain time, ceases by the very fact of the defined time having elapsed, without."

[*Latin ed. p. 759*]

375 Moreover, the letters of dismissal are those in which the written permission and consent of the proper prelate are contained, so that his subordinate may be ordained by another Bishop. The testimonial letters, on the other hand, are those in which testimony is given regarding the probity, morals, and suitability of the cleric, so that the orders may be conferred upon him. (i) Hence, let no one infer that such a testimonial is necessarily required when imposing a suspension, in order to confer orders upon a subordinate of another, that is, one who is not of that prelate's origin, domicile, benefice, or familiarity, without the dismissal letters of the Bishop; or even upon a subordinate of his own, who has resided elsewhere for so long that he may have incurred some impediment there, without the testimonial letters of the Ordinary of that place, or any other dispensation... And the reason is, because when a suspension is imposed in this manner, it is properly not a censure, and therefore, an absolution is not required to remove it, but it is a penalty, which does not exceed the limits imposed by the one who imposed it, who therefore defined a certain time, because he judged that the offense did not deserve a longer punishment... This is true not only in the external forum, but much more so in the internal forum, because the suspended person is not legally obligated, after the prescribed time has passed, to request a new license or declaration, so that he may lawfully exercise the functions of his office, or receive the fruits of his benefice, from which he was suspended, but upon the impediment of the suspension ceasing, it will be lawful for him to exercise his office, or to use his benefice, as before; and he will always be able, in the external forum, if he has been suspended by a human authority, to prove, during the time of the suspension, that he has abstained from those ecclesiastical acts for which he was suspended. (1) Furthermore, it is clear from the Council of Trent, Session 23, chapter 3, that the Bishops who confer orders are not required to inquire about the title and suitability of those being promoted, stating: "Bishops themselves confer orders." And if they are hindered by illness, they may send their subordinates, "whom they know to be already approved and examined," to another Bishop. Moreover, Lambert, in his collection of decrees, folio 1721, states that, according to the same Council, Session 23, Dub. § 3, "regarding the reform of Bishops," if a Bishop sends

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his subordinates to another Bishop to be ordained, he must send them "who have been approved and examined." This opinion has consistently held, that the Bishop to whom the commission is made is not required to inquire whether those sent are suitable, and whether they have a sufficient title for ordination, as Fagnan states in chapter 52. However, according to a decree of the Sacred Congregation of the Council, dated January 16, 1595, in the case of a doubt: "Whether a Bishop who confers orders on the subordinates of another, with the dismissal letters of his own Bishop, is required to examine them," the response of the proper Bishop was: "He is required to examine them, but he may also confer orders on them, even if they have not been examined, if he does not wish to do so." This resolution, regarding the doubt of ordination, was issued on January 17, 1693. See Lucidi, Op. cit., Vol. 1, page 154, note 75.

[*Latin ed. p. 760*]

376. It must be done in writing; consequently, the ordaining Bishop incurs a censure by suspending a subject who is not his own, or who is a subject of another, without the proper dispensations or testimonial letters. Indeed, the verbal testimony of the proper Bishop has the same force as a written testimony; for it provides the ordaining Bishop with the assurance that the person to be ordained also has the permission of his own Bishop to receive the orders, and is not hindered by any canonical impediment. The testimonial and dispensation letters are granted for this purpose, so that neither unworthy persons, nor subjects of another, may be ordained without the consent of their own Bishop. However, the end of the law is perfectly fulfilled by verbal testimony. Therefore, the ordaining Bishop does not incur the censure, when he simply observes the law; for he does not ordain without testimony. Furthermore, Reiffenstuel writes in book 1 of Decretals, Title XI, number 110: "Moreover, the license to receive orders from a foreign Bishop is usually given in writing, so that it may be better established in writing that there is the consent of the proper ordinary, as long as it is contained in writing. However, it is not absolutely required in writing, if there is some other proper and lawful proof of such consent, as is inferred from the Council of Trent, Session XIV, Chapter 2 on Reform, where, speaking in conjunction, it prohibits Bishops from ordaining a subject of another without the express consent of their own prelate, or by means of dispensation letters; (1) and thus the express consent of the proper prelate will suffice, even if it is not given in writing." However, the case mentioned in section 6 of this chapter must be excepted. For there, it is expressly and necessarily required that a Bishop of Italy beyond the Alps shall not ordain, unless he has a special license from the Pope, or from his own Bishop, by his clear letters containing a reasonable cause why he does not, or cannot, ordain. Therefore, to ordain a subject, whether of another by any title, without dispensation letters, or without the testimonial of his

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own Bishop, or his own in the case explained above, is an act which incurs the censure mentioned in this chapter. I say, however, that if the person to be ordained has not yet received the first clerical tonsure, although the Bishop conferring it acts illicitly by doing so without consulting his proper ordinary, he will not incur this censure. (1) The Fathers of Trent say: "No Bishop, whom we call titulars, even if he resides in the place of a diocese which is null, even if exempt, or in any monastery of any order, may, by virtue of any privilege granted to him for the promotion of any who come to him, ordain or promote another's subject, even under the pretext of continued familiarity and commensality, without the express consent of his own prelate, or by means of dispensation letters, to any of the sacred or minor orders, or to the first tonsure."

[*Latin ed. p. 761*]

Nor does this present a difficulty, since Innocent XII in the aforementioned Bull, *Speculatores*, § 3, decreed: "To no Bishop, or to any member of any Order, even though adorned with the honor of the Cardinalate, it is permitted to legitimately confer, according to the manner explained below, an external ecclesiastical benefice, which, by reason of origin or domicile, is not subject to him, for the purpose of promoting a cleric to the priesthood, or for the purpose of conferring upon him any ecclesiastical benefit which has not been immediately and canonically conferred upon him, or for which he has not already been presented or nominated by his superiors, under the pretext that the aforementioned benefice was newly founded with the express addition of this law, so that he might be instituted to it immediately after receiving the clerical tonsure. I say that this does not present a difficulty. Although we readily admit that the prohibition of Innocent XII is still in force, we deny that Bishops who confer the clerical tonsure upon a cleric without the necessary testimonials incur the present censure, or any other censure. Indeed, Pope Pius IX taught that the ancient laws were to remain in force with the addition of this condition, namely, that they should be in accordance with his Constitution. But it is certain that the law of Innocent XII does not agree with the Constitution of Pius IX; for Pius IX inflicts the censure of suspension upon those who ordain, while Innocent XII speaks of those who confer the clerical tonsure, which is not the same thing as ordination; and since the law is odious, it must be strictly interpreted. Furthermore, Innocent XII himself, as is clear from the cited testimony, speaks distinctly of the clerical tonsure as a special act, not to be confused with ordination; and he does not use the word "ordaining" in this connection, but rather "to promote to the priesthood," which indicates that he was expressly speaking of the clerical tonsure, so that it could be upon the law. Since, therefore, Pope Pius IX does not mention the clerical tonsure expressly, and uses the word "ordaining," which is understood to refer only to those who properly confer the sacred orders, the clerical tonsure

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is unjustly included under the law of Pius IX. Moreover, the opinion of many and learned commentators is as follows: for example, Patavini, Ciolli, Conrad, Pinto, and P. De Mare, in *Institutiones Morales Alphonsianae*, n. 1363, and in *Nouvelle Revue Theologique*, vol. 17, page 492. As we have said, the law prohibits Bishops from ordaining a subject who is not their own. What, then, about the Regular Canons? Since those who ordain a subject who is not their own without the commendatory letters or dismissal letters of their own Bishop are suspended by the legislator, and since the Superiors of the Regular Canons are not Bishops, it might seem that those who confer orders upon Regular Canons can avoid this censure. However, in this matter, a distinction must be made between the Regular Canons who are exem-

[*Latin ed. p. 762*]

378. Those who enjoy the privilege of exemption from the jurisdiction of the Bishop, enjoy it over those who do not possess such a privilege. And we say that Ordinaries who ordain without the appropriate letters of dismissal from their Superiors incur suspension, not those who ordain while lacking the privilege of exemption. And we believe this to be manifest. 4. Because in Piano Capite, the words are to be understood without the dismissal letters of that Bishop, concerning any Ordinary; otherwise, those who ordain a subject who is not under any Diocese, or a Diocese where the See is vacant, without the appropriate letters from the Abbot or Capitular Vicar, would not incur this suspension. 2. Because the meaning or extension of the word "Bishop" is determined by the subject matter of the chapter, which states (1) that subjects of other jurisdictions are prohibited by the Decree from Reiffenstuel; but exempt religious are not under any jurisdiction; therefore, they are under the jurisdiction of another Bishop; and therefore, they cannot be ordained without the permission and consent of their Superior. 3. From the decree of Clement VIII of March 15, 1596, it pertains to the Superiors Regular, not to the Bishops, to grant letters of dismissal for the sacred Orders of their subjects. (1) Nor are religious required to show the dismissal letters of the Bishop of their domicile or origin, as the Sacred Congregation declared on February 28, 1644, with these words: "Religious who wish to be promoted to the orders, are not required to show the dismissal letters of the Ordinaries of their own origin, but it is sufficient that they observe the form prescribed in the decree of the Most Holy Clement VIII in Benedict XIV, Constitution Impositi nobis." From these, we believe it is clear (2) that we transcribe Canon Law, Title XI, by the mandate of the Most Holy Lord Pope Clement VIII, in number 133. Concerning the present mandate to all and each of the Superiors of the Regular Canons, that henceforth they observe, and cause to be observed, what is contained in the Decree of the Holy Congregation of the Council of Trent, the tenor of which is as follows: "The Congregation of the Council

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decided that Superiors Regular can grant dismissal letters to their own subject, who is also a religious, who wishes to receive the Orders, provided he possesses the required qualifications, to the Diocesan Bishop, namely that of the Monastery, in whose jurisdiction the religious is located; and if there is no Diocesan Bishop, or if he would not be able to perform ordinations, to any other Bishop; provided, however, that he is examined by the Bishop who will confer the orders, as to doctrine; and provided that the Regular Canons do not delay the granting of the dismissal letters at that time, when the Diocesan Bishop, or who would not be, or would not have ordinations. But if dismissal letters are given by the Superiors, in the absence of the Diocesan Bishop, or if he does not have ordinations, then these letters must certainly express the reason for the absence of the Diocesan Bishop, or the fact that he will not have ordinations. Those who do not do so incur penalties for the violation of office and dignity, or administration, and for the deprivation of active and passive voice, and other penalties reserved at the discretion of the Most Holy Lord Pope. (2) Some seek to prove this opinion with the words of Impositi nobis, issued on February 27, 1747, in which Benedict XIV, among other things, decreed: XIV Constitution: "Finally..."

[*Latin ed. p. 763*]

379. Whether, in the case of regular canons, these [dismissory letters] are to be disregarded, or whether the absence of the local Bishop, or the fact that ordinations are not to be conferred at times prescribed by the Church, should be taken into consideration? Certainly, that Bishop, if he conferred the order upon a regular canon, would not escape the present suspension. Indeed, such dismissal letters are in no way valid in this case, as decreed by Benedict XIV in the aforementioned Constitution: "Furthermore, we wish and decree that dismissal letters of regular canons, which are issued because the regular canon is to be transferred to another prelate, either because the diocesan Bishop is residing outside the diocese, or because he will not be able to confer the ordination, have no force or validity, unless they are accompanied by an authentic document." Therefore, Bishops who ordain regular canons without the dismissal letters of their superiors incur the present suspension. However, it must be noted that, both according to the aforementioned decree of Clement VIII, and according to the aforementioned Constitution *Impositi nobis*, it is by no means permissible for regular superiors to grant dismissal letters to their subjects to any Bishop, (unless, of course, this has been specifically granted to them, and not through the communication of privileges) (1), but rather they are to send those to be ordained to the Bishop of the place where the monastery is located, for the purpose of promoting them to the orders. What, then, if a regular canon is sent to a foreign Bishop for ordination, and he brings with him the dismissal letters of his respective superior? "Those prelates

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who impose hands upon [the regular canons] easily avoid the canonical penalties proposed against those who presume to ordain subjects of others without sufficient dismissal letters." And a little later, regarding the censures incurred, it is said: "Also, the superiors themselves who have ordained these regular canons, or regular canons for the promotion of orders, are subject to censure." Nevertheless, such authority does indeed have an effect. Indeed, Benedict XIV did not sanction the reception of religious orders without the dismissal letters of their superiors, but rather he spoke of those who, contrary to the aforementioned decree of Clement VIII, received the sacred orders from other Bishops, and not from the Bishop of the domicile, or of the place where the religious was to be promoted, with the dismissal letters of their respective superiors. Since the superiors of the regular canons in their dismissal letters either omitted the absence of the Bishop, or the reason for not being able to express everything, hence Benedict XIV says: "Those who presume to ordain subjects of others without sufficient dismissal letters, when the dismissal letters are presented, are to be disregarded." (1) These things are found in the aforementioned statutes of Innocent XIII, the predecessor of this Congregation. In a particular council, he decreed that it is sufficient for the aforementioned purpose that such privileges were granted after the Council of Trent, even if the aforementioned privileges are not [in force]; provided, however, that it is clearly established that they were directly granted, and not asserted to be derived from the communication of privileges from one order to another.

[*Latin ed. p. 764*]

380. The station of the Vicar General, or of a Canon, or of the Secretary of the same Bishop of the Diocese, from which it is established, or from which the Bishop himself is absent, or that a cleric will not be ordained at the next legal time, according to the ecclesiastical laws established for this purpose: it must be expressly declared, in order to exclude the arrogance of some who, enjoying the privilege of receiving ordinations outside of the proper times, might think that the Bishops are so devoted to their own will that, if, in whatever way it pleased them, someone were to be promoted to the orders, and if, on the very day designated by them, the vows were fulfilled, it could be said that the ordination was not from the Bishop, and therefore another Bishop would be required to administer the ordinations. But if any prelate should presume to promote to the orders a religious of a regular order who does not have his proper domicile in his own Diocese, merely on the basis of dismissal letters from his Superior, without the aforementioned attestation in the proper form, we decree and declare that such a person thereby incurs the canonical penalties established against those who have ordained a subject who has been legitimately dismissed.

Such a sanction is not found, in any way, to be in contradiction with the Apostolic Constitution (1) Bizzarri Collectanea, page 760. However,

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this is not the case for those religious who, for any reason, do not enjoy the privilege of exemption: these, if ordained by a foreign Bishop, must present the dismissal letters of their own Bishop. This is evident from the case discussed between the Bishop of Tarvisium and the Superior of the Congregation of Charity (1), in which the following questions were proposed: 1. Whether and how the Bishop of Tarvisium can admit students of the Institute of Charity to Holy Orders, presenting a certificate from the Superior affirming that they are attached to the same religious house; and whether dismissal letters and testimonial letters from the Bishop of origin or domicile are necessary, according to the form of the Constitution Speculatores issued by Innocent XII? 2. Whether the same should be said of students who have received the first tonsure, or any other order, from another Bishop? The Most Eminent Fathers, after hearing the opinion of the Reverend Bizzarri, responded: To the first question, negatively to the first part, and affirmatively to the second part. To the second question, affirmatively in all respects. From this it follows that if any Bishop should promote to the orders such religious men, who are not exempt by a special privilege, without...

[*Latin ed. p. 765*]

381. By missorial letters, the Bishop shall determine the domicile and origin, and shall regulate the present suspension. And this applies to subjects who are not under his jurisdiction. However, with regard to a subject who has resided elsewhere for so long that he may have incurred some canonical impediment there, it must be observed, as with Avanzini, that the necessary delay, which is subject to the law, must be entirely omitted from the words of the article, so that he may have incurred such a canonical impediment there. However, it must be noted that we are not speaking of a philosophical possibility; for a canonical impediment can be incurred at a given moment in time; but of a legal possibility, which, according to the circumstances of place and person, is more frequently put into effect. For the law looks to what frequently happens, and not to what rarely happens. Otherwise, if an impediment could be incurred in any place and at any moment in time, dismissal and testimonial letters would have to be requested from all Bishops in whose diocese the one to be ordained had stayed, even for a single day. Which would be almost ridiculous. If, however, some rule is sought in this matter, the safest course would be to adopt that which is in force with regard to marriage, namely, that testimonial letters regarding freedom of status should be produced by those who have resided for so long in various places, so that a document of free status is deemed necessary. Furthermore, a document of freedom from marriage is required from all places in which the contracting parties have resided for more than six months, as stated by Ballerini, *Theol. Mor.*, and by Gury, *Tom. 11, page 1025*. Note (a). Therefore, if the one to be

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ordained, after due consideration, that is, after the completion of seven years, has resided for more than six months in several dioceses, he must present to the ordaining Bishop testimonial letters from all those Bishops in whose dioceses he has resided. Similarly, clerics who have completed their studies in a seminary must be ordained by their own Bishop, but with the testimonial letters of the Bishop in whose diocese the seminary is located, as also declared by the Holy Congregation of the Council on July 11, 1540. With regard to canonical impediments which prevent the sacrament of ordination, not all are of the same nature; and furthermore, some can be incurred in the place of origin or domicile, while others can be incurred in any place of residence. We give the following list to the reader, taken from Monacelli's *Formularium legale practicum De Collat. Ordin.*: Those who cannot be promoted. Non-baptized, *Cap. Veniens de Presbyt. non bapt.*, *Tom. III, page 498, 2*.

[*Latin ed. p. 766*]

382 Illegitimate children, Canon 1, Presbyter, 56, Dist. Minors of age, Canon 1, Qui in aliquo, 51, Dist. Those not confirmed, Council of Trent, Session 23, Chapter 4, on Reform. Neophytes, according to Canon 1, Qui in aliquo. Canon 1, Quoniam, 48, Dist. Married men, Extravagant of John XXII, Antiqua. Bigamists, Canon 1, Si quis, 33, Dist., and entire title, on not ordaining bigamists. Criminals, Canon 1, Laici, Dist. 33, Council of Trent, Session 14, Canon 7, on Reform. Infamous persons, Canon 1, Infames, 6, q. 1. Those implicated in public scandals, Canon 1, Legem, 53, Dist. Servants, Canon 1, De servorum, de sem. not to be ordained. Eunuchs, Canon 1, si quis, 55, Dist. Those defiled in the body, Canon 1. Illiterate persons, 36, Dist. Those conspicuously deformed, Canon 1, fin. 51, Dist. Those insane or frenzied, according to Canon 1, Qui in aliquo. Buffoons, Canon 1, Communiter, 33, Dist. Pilgrims and unknown persons, according to Canon 1, qui in aliquo. Those devoted to drunkenness and gluttony, Chapter 23, on the life and honesty of clerics. Manifest usurers, Canon 1, Episcopus, 47, Dist. Rude and ignorant persons, Council of Trent, Session 23, per tot. Irregular persons, Canon 1, Saepe, on the law of ordination, in 6. Those suspended, interdicted, excommunicated. Those suffering from contagious diseases. Lani, Cauponae, Mimi, Histriones (prostitutes, innkeepers, courtesans, actors). Those who have committed cruel acts, or have denounced others, subject to punishment or mutilation. Canon 1, Communiter, Canon 1, Clerici, Dist. 33, Chapter 1, on the life and honesty of clerics, in 6, Clementine, 1, ibid., Canon 1. Those mentioned in Quaestio 23, 8, Chapter, Sententia sanguinis, Ne Clericor. vel Monachor., Chapter, From letters on Excess of Prelates. Before we conclude this chapter, it must be noted that those who ordain a subject under the pretext of immediately conferring a benefice, or who have already conferred a benefice, but one that is by no means sufficient, are also subject to suspension. Indeed, it is clear in itself that one cannot ordain a

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subject who is not a beneficiary. However, with regard to the second point, when the legislator speaks absolutely of the title of a benefice by which someone becomes a subject of the ordaining prelate, that benefice must be such that it is entirely sufficient for the honest support of a cleric; therefore, if the ordaining bishop were to grant a benefice that is indeed insufficient by ordaining, but were to provide a sufficient amount through patrimonial goods added to the benefice, the ordaining bishop would be subject to suspension; for it would simply be false to have ordained a subject under the title of a benefice, when the insufficient title does not constitute a title for the sacred order.

[*Latin ed. p. 767*]

383. A donation cannot be valid; and furthermore, legislators in this matter speak of an adequate and sufficient benefit, which cannot, nor ought, to be supplemented by patrimonial goods, as is clear from the testimony cited above from Innocent XII, especially with those words in which any possibility of supplementing what is lacking with the fruits of the same benefit is removed, even when the patrimony to which it is added is abundant, which the cleric would obtain in the same, or any other, diocese. This reasoning, being absolute and determinate, applies even to lower orders, and excludes any exception; it cannot, therefore, be restricted to only higher orders. Hence, it cannot be concluded that a benefit must be unique and sufficient for a cleric to become subject to a foreign bishop; for a bishop can confer several ecclesiastical benefits, which do not involve the burden of residence and office, and which are sufficient for his honest support, as has happened and does happen. In this case, the cleric would become absolutely subject through the ecclesiastical benefit; moreover, Innocent XII forbade the addition of patrimonial goods to a benefit that was conferred but was insufficient, not other ecclesiastical goods, which can legitimately be conferred upon someone. Finally, although some have thought that a benefit must be residential, the Holy Congregation of the Council of Trent, on May 2, 1598, defined that it suffices if the benefit is simple. It follows from this that if someone possesses several benefits in different dioceses, of which each is sufficient for the honest support of a cleric, the cleric can be ordained by the bishop he prefers; for he is subject to any bishop by reason of the benefit. But if the benefits are insufficient in different dioceses, he cannot be ordained by anyone without a dismissal letter from the bishop of origin or domicile, or even from various bishops in whose diocese the cleric is to be ordained for a complete period of six months. It must also be noted that, although a benefit that is removable does not provide a suitable title for receiving the sacred orders, it nevertheless provides a valid reason for a cleric to become the proper subject of the bishop in whose diocese the removable benefit is held; because for something to be an ecclesiastical benefit, it is sufficient that perpetuity inheres in the benefit itself, although

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it does not pertain to the person who receives it: as the Holy Congregation of the Council declared in Pinnen, Beneficia et Juris Patr., May 14, 1859, as Lucidi, in the aforementioned place, page 160, teaches. Furthermore, Honorante, in Praxis Secret. Trib. Vic., Chapter 8, states that although a benefit consists entirely of distributions, it nevertheless provides a canonical reason why someone can be ordained by reason of the benefit.

[*Latin ed. p. 768*]

384 denarii from the Bishop, in whose Diocese the benefice is established. However, the same is not to be said of a Coadjutor with a future succession, although he has been assigned a suitable and legitimate position; for he is not made a subject of the Bishop by reason of the benefice, but by reason of the domicile which the Coadjutor legitimately acquires in that Diocese, as the same Lucidi teaches in the cited passage, page 161. Regarding the title of familiarity, we believe that the time during which one was a familiar [of the Bishop] can be included in this calculation, even if he was not yet a Bishop. Indeed, the Holy Congregation of the Council in Catania, on November 9, 1859, states: "A Bishop cannot, according to Chapter IX, Session 23 of the Council of Trent, ordain his familiar as a subject, unless he has been with him for three years." A difficulty arises as to whether this three-year period can include the time during to which he was with him before he was promoted to the episcopate; therefore, a request is made for a resolution. The Sacred Congregation of the Council responded: "Certainly, it can be included."

2. It must be observed that the title of familiarity does not merely imply residence in the Bishop's house, or living at his expense, but, moreover, and principally, the service rendered to the Bishop. Hence, it follows that nephews and relatives of Bishops, even if they reside with him and are supported by him, cannot be ordained by him with the title of familiarity without dispensations or commendatory letters from the Bishop of their origin or domicile, as the same Holy Congregation defined in Brixen, on September 11, 1608.

3. Finally, it must be observed that a Bishop cannot promote his familiar to the orders of familiarity with the title of patrimony or pension, nor for the benefit or necessity of his own Church. As it is clear from the Holy Council of the Council in Tricarico, on July 27, 1697, in a proposed doubt: "Whether, with the current Constitution *Specula* in force, a Bishop can promote his familiar, who has been with him for three years, to the sacred orders with the title of patrimony, without any ecclesiastical benefit being conferred, due to the necessity or utility of the Church?" The response was: "No." The same applies to the title of pension, as Monacelli states in *Form. Leg. Practic. Part. 1 Tit. 3 form. 17, n. 1*, who writes: "And what is said of patrimony applies also to the title of pension, because this has an attached spiritual right, but consists of mere temporality, like patrimony; and both

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signify the Council of Trent, Session 22, Chapter 2, on Reform: Whatever should be said... according to the sense of the ancient resolutions."

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